Supreme Court, U.S.
FILED
APR 17 1970
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 896

GEORGE K. WYMAN, as Commissioner of the Department of Social Services of the State of New York, and the DEPARTMENT OF SOCIAL SERVICES OF THE STATE OF NEW YORK,

Defendants-Appellants,

against

EDNA ROTHSTEIN, SYLVIA MILLER, HENRIETTA BATSON, CATHERINE JONES and DOLORES HARVANEK, as individuals and on behalf of all other persons similarly situated,

Plaintiffs-Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT OF NEW YORK.

Docketed November 28 1969
Probable Jurisdiction Noted February 24, 1970

340 Press of Pioneer Pkgs., Inc., 417 Canal St., N. Y.—966—6970

INDEX

	PAGE
Relevant Docket Entries	1
Complaint	4
Order to Show Cause—Re: Preliminary and Permanent Injunctions and Convening of a Statutory Three-Judge Court	20
Affidavit of Allen Redlich in Support of Order to Show Cause	23
Affidavit of Edna Rothstein	28
Affidavit of Sylvia Miller	29
Affidavit of Henrietta Batson	31
Decision and Order Convening a Three-Judge Court (MOTLEY, J.)	35
Answer	37
Deposition of George K. Wyman taken by the Plaintiffs	40
Defendants' Notice of Motion for Summary Judgment	91
Affidavit of Vernon Murphy in Support of Defendants' Motion for Summary Judgment	92
Opinion of Statutory Three-Judge Court	101
Preliminary Injunction Order	125
Order to Show Cause—Re: Leave to Intervene	127
Affidavit of Burr C. Hollister in Support of Application for Leave to Intervene	130
Affidavit of Catherine Jones	139
Affidavit of Dolores Harvenek	140

PAGE

Intervenor's Complaint 141

Affidavit of Philip Weinberg in Support of Defendants' Application to Vacate the Order to Show Cause or to Deny the Motion to Intervene 158

Order Granting Leave to Intervene and Extending Preliminary Injunction 164

Letter Containing Opinion of Mr. Justice Harlan Denying Appellants' Application for a Stay Pending Appeal 167

Affidavit of Joseph S. Barbaro attached to Plaintiffs' Memorandum of Law in Support of a Motion for a Temporary Restraining Order 168

Affidavit of John Calbreath Burdis attached to Plaintiffs' Memorandum of Law in Support of Motion for Temporary Restraining Order 170

Letter from James Callison to George K. Wyman dated November 10, 1969 submitted by Plaintiffs to this Court by Letter dated January 7, 1970 ... 172

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law) 175

Handbook for Case Units, New York City Dept. of Social Services, Jan. 1968 (Appended to Plaintiffs' Memorandum of Law) 187

Price Guide Bulletin No. 9, Westchester County Dept. of Social Services (1967) (Appended to Plaintiffs' Memorandum of Law) 192

Affidavit of Joseph S. Barbaro Attached to Plaintiffs' Memorandum of Law in Support of Motion for Leave to Intervene 210

Relevant Docket Entries.

Date	*Proceedings*
June/25/69	Complaint and issued summons.
June/26/69	Summons and return. Copy received by Attorney General's Office on 6/25/69.
June/26/69	Order to Show Cause—Ordered that Defts. show cause in room 506 on 7/1/69 at 10:00 why an order should not issue a preliminary and permanent injunction. Tasker J. Mailed notice.
June/26/69	Plaintiffs memorandum of law in support of motion for a temporary restraining Order.
June/26/69	Plaintiffs memorandum in support of motion for a temporary restraining order. Appendix continued.
July/7/69	Memorandum decision and order for three Judge Court. Ordered motion to convene a three judge court is granted and the case is referred to the Chief Judge of the Circuit. Motley J.
July/10/69	Designation or Judges ordered that in addition to Hon. Motley, DJ. Hon. Hays, C.J. and Hon. Mansfield, DJ are appointed to hear and determine said cause. Lombard, CJ. CH.
July/11/69	Motion for leave to take depositions upon oral examination with 20 days after commencement of action.
July/11/69	Order granting motion for leave to take depositions upon oral examination. Motley, J.
July/17/69	Plaintiffs Memorandum of Law in support of their motion.
July/17/69	Answer of defendants to complaint.
July/17/69	Notice of Motion re: summary judgment. (3-Judge court).
July/17/69	Memorandum of defendants in opposition to plaintiffs' motion to convene a 3-judge statutory court.

Relevant Docket Entries.

Date	*Proceedings*
July 17 69	Plaintiffs Memorandum of Law in support of their motion for pre. in.
Aug. 4 69	Opinion #30078. 3-Judge Court. Hays, C.J., Mansfield, D.J. and Motley, D.J. Plaintiffs' motion for preliminary relief is granted to the extent indicated. Trial of the action will commence on 10/6/69 at 10:30 A. M. Defendants' motion for summary judgment is denied. The foregoing constitutes the Court's findings of facts and conclusions of law. Submit Order on Notice in Accordance With Rule 65(d) FRCP.
Sept. 12 69	Three Judge Court Order—Ordered pending further order of this court or termination of this action defendants, their agents and employees are restrained as indicated, etc. (2) Defendants motion for summary judgment is denied. Hays, U.S.C.J. Mansfield U.S.D.C. and Motley U.S.D.J.
Sept. 12 69	Defendants memorandum of law in opposition to plaintiffs' motion.
Oct. 3 69	Application for adjournment of trial.
Oct. 3 69	Memo. End. on adjournment for trial filed this day. The attached motion is granted. It is so ordered. 3 Judges—Hays, C.J., Mansfield, D.J. and Motley, D.J.
Oct. 6 69	Order to Show Cause re: leave to intervene. Ret. Room 1106 on 10/10/69 at 3:30 P.M. (to Motley, J.).
Oct. 8 69	Summons and complaint by Burr C. Hollister.
Oct. 10 69	Plaintiffs-applicants memorandum of law.
Oct. 10 69	Defendants' notice of appeal to the U.S.S.C.
Oct. 15 69	Affidavit of Avram Weisberger.
Oct. 16 69	Affidavit of Philip Weinberg in support of defendants application to vacate.

Relevant Docket Entries.

Date	*Proceedings*
Oct./16/69	Defendants objections to orders submitted for settlement.
Oct./22/69	Order to Show Cause Ret. before Judge Hays, C.J. on 10/27/69 at 4:30 P.M. re: stay execution of orders enjoining.
Oct./22/69	Notice of Settlement and Order ordered plaintiffs Catherine Jones and Dolores Harvanke have leave to intervene on behalf of themselves. Sd Motley, J.
Oct./27/69	Statutory Court hearing held Atty. Gen. application for stay of preliminary injunction. Denied. Hays, C.J., Mansfield, J., Motley J.
Oct./27/69	Record of proceedings dated 7 15 69.
Oct./27/69	Notice of Appeal to the Supreme Court of the United States.
Oct./31/69	Affidavit of Chester T. Williams.
Oct./31/69	Affidavit of Burr C. Hollister in opposition to defendants motion.
Oct./31/69	Pltffs memorandum of law in opposition to defts motion.
Nov./13/69	Filed Order ordered that the clerk of this court is authorized and directed to transmit to the Clerk of the Supreme court all original papers filed in the Office of the Clerk of this CoCourt and said records are to be safely kept by the Supreme Court of the U. S. and that they be returned to the clerk of this court upon conclusion of appeal. Mansfield, J.
Nov./17/69	Certified record on appeal to the U. S. Supreme Court.

* The dates indicated refer to the date of filing with the Clerk of the Southern District not necessarily to the date submitted to Court.

Complaint.

I

Plaintiffs on behalf of themselves and all other persons similarly situated seek a declaration that New York Social Services Law, Sections 131 as amended Laws Ch. 184, March 31, 1969 and 131-a added Laws Ch. 184, and as amended Laws Ch. 411, 1969 are in violation of the Fourteenth Amendment to the Constitution of the United States insofar as said sections have the effect of denying equal protection of the law, and are violative of the Social Security Act, 42 U.S.C. § 301 et seq. and the regulations promulgated thereunder.

Plaintiffs seek to enjoin any action under the aforesaid Statutes to reduce the quantum of public assistance that they and others similarly situated now receive.

II

PRELIMINARY STATEMENT

On March 29, 1969, the Legislature of the State of New York enacted § 131-a (see Exhibit A) which reduces by significant amounts the "standard of need" and actual grants to be paid to public assistance recipients in New York, as hereinafter more fully set forth. Such reductions were made pursuant to express legislative findings in the Act of a "spiraling rise of public assistance rolls and the expeditures therefor," the "economic concern of the people of the State of New York," and the necessity for the legislature to set "the costs of delivering the needs of public assistance recipients in the respective social services districts of the states." Law Ch. 184, § 1, March 31, 1969.

The aforesaid standards and maximum grants will be fully implemented on July 1, 1969.

The New York Act is in direct conflict with the requirements of federal law, denies recipients of public assistance in New York the protections and entitlements afforded them by federal law, and causes serious and irreparable harm to said recipients. Specifically, as hereinafter more fully set forth, the New York requirements unreasonably and irrationally limit standards and maximums of grants to recipients who receive Aid to the Aged and Aid to the Disabled and Aid to the Blind and who reside in Nassau and Westchester Counties and elsewhere outside of New York City to levels significantly lower than those applicable to recipients similarly situated who reside in New York City despite similarity in living costs. The latter distinctions violate federal statutory requirements mandating uniform standards of need and maximum grants throughout the state, set forth hereinafter, and additionally, the Equal Protection Clause.

III

Jurisdiction

The jurisdiction of the Court is based upon:

(a) 28 U.S.C. §§ 1331, 1337 and 1343.

(b) 28 U.S.C. §§ 2201 and 2202.

(c) 42 U.S.C. §§ 1983 and 1988.

(d) United States Constitution, Article VI and the Fourteenth Amendment.

The amount in controversy, exclusive of interest and costs, exceeds $10,000.

IV

Statement of Claim

1. Pursuant to the Social Security Act of 1935, 42 U.S.C. §§ 301 et seq., New York cooperates with the Federal Government in providing public welfare assistance to needy persons under a New York "state plan," consisting of state statutes and regulations and approved by the United States Department of Health, Education and Welfare. In order to participate in said program New York must comply with all pertinent federal statutes and regulations.

2. Pursuant to the state plan, eligible individuals receive regular recurring semi-monthly or monthly checks for food, rent and other items of basic subsistence. Grants are given for food, household supplies, and recurring personal needs, and a separately computed amount for actual rent and utilities. It is the basic grant for food and recurring needs that is at issue in this case.

3. Prior to September 1968, all recipients in New York State were also eligible for "special needs" grants to provide for lacking, deteriorated or outgrown items of furniture, clothing, kitchen supplies and other items. The provision for such grants recognized that the "regular and recurring" grant did not provide sufficient monies to recipients to permit them to purchase or replace the needed items which were the subject of the "special needs" grants.

4. Among other things, the "special needs" grants provided monies for the purpose of:

(a) Supplying families with an amount for home furnishings and clothing consistent with a minimal standard of health and decency at the time a family began receiving public assistance and from time to time thereafter.

(b) Replacing essential items of home furnishings and clothing as they became worn out, unsafe, or a hazard to health.

(c) providing for telephones for those persons demonstrating medical or other necessity, special diet requirements pursuant to doctors' orders, restaurant meals for those unable to cook at home, travel for welfare and medical business, layette for newborn infants, job-hunting expenses, school fees, burial expenses, and so forth.

5. On August 27, 1968, as the result of a substantial increase in special needs grants in New York City because of proper payments for legitimate needs, the City effectuated under the guise of a "demonstration project," a substantial reduction in its expenditures and in the amounts paid to many needy families by eliminating all special needs grants for clothing and household furnishings and providing instead a "special flat quarterly grant" totaling $100 per year per recipient allegedly to cover the cost of such items. Said "special flat quarterly grant" is an addition to the "regular and recurring" grant. Recipients continued to remain eligible for grants for the items of special need enumerated in paragraph (4)(c) above.

6. The so-called "special flat quarterly grant" at no time applied to persons residing in counties of New York State other than those constituting the City of New York. Recipients outside of New York City continued to be eligible for all special needs grants. Thus plaintiffs herein continued to receive grants for special needs under existing § 131 of the Social Services Law.

7. On or about March 29, 1969, the New York State Legislature, which had previously authorized the State Department of Social Services to establish grant levels, adopted Social Services Law § 131-a and set its own stand-

ards of need and maximum grants, exclusive of rent and fuel, for persons living in New York City as follows:

Number of persons in Household

One	Two	Three	Four	Five	Six	Seven	For each additional person
$70	$116	$162	$208	$254	$297	$340	$43

and the following standards of need and maximum grants for recipients outside of New York City:

Number of persons in Household

One	Two	Three	Four	Five	Six	Seven	For each additional person
$60	$101	$142	$183	$224	$257	$290	$33

8. (a) Thereafter by Laws, Ch. 411, May 9, 1969 the said section 131(a) of the Social Services Law was amended to provide:

> Provided it accords with federal requirements, the regulations of the department shall provide that the commissioner, with respect to any social services district to which subdivision three applies, may promulgate a schedule of monthly grants and allowances for greater or lesser amounts than established by the regulations of the department applicable to such district, but not to exceed the maximums prescribed by subdivision two, for all items of need exclusive of shelter and fuel for heating, if it is established that in such district the total cost of the items included in the schedule applicable to such district actually is more or

less, as the case may be, than the cost thereof reflected in such schedule. A social services official may, with the approval of the appropriate local legislative body, make application to the department for the promulgation of a schedule pursuant to the subdivision. (See Appendix B)

8. (b) Thereafter on or about June 5, 1969 a Bulletin (See Appendix C) was issued and a schedule (SA-2) was adopted by the New York State Department of Social Services setting forth standards of assistance for recipients of public assistance in Nassau and Westchester Counties and in certain other counties to become effective July 1, 1969 as follows:

One	Two	Three	Four	Five	Six	Seven	For each additional person
$65	$107	$149	$191	$233	$270	$307	$37

8. (c) As the result of these enactments, the amounts for which plaintiffs qualify under law are substantially reduced, as is demonstrated in the tabulation set forth subsequently herein. These reduced "maximum monthly grants" will become effective July 1, 1969, and the New York State Department of Social Services is now taking the appropriate administrative steps to allow for effective and complete implementation throughout the State by July 1, 1969.

9. By adopting Section 131-a, the Legislature lowered the standards and significantly reduced the grants available to recipients in the following way, among others:

(a) Cost of living increments which had been added to the "regular recurring" grants are wiped out for numerous

families, and the families reduced below standards existing in July 1967.

(b) The "special flat quarterly grant" for New York City residents is abolished.

(c) Recipients living in certain places outside the City of New York, such as plaintiffs who reside in Nassau and Westchester counties and who presently receive "regular and recurring" grants equal to those living in New York City because of equally high or higher living costs, are even further reduced in the standards and grants.

(d) The "special needs" grants for recipients living outside New York City are abolished.

10. (a) United States Department of Health, Education and Welfare regulations require that state plans must:

> "Provide that the standard [of assistance] will be uniformly applied throughout the State." 45 C.F.R. § 233.20(a) (2) (iii), 311 Fed. Reg. 1394 (Jan. 29, 1969) and
>
> "Provide that payment will be based on the determination of the amount of assistance needed and that, if full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly state-wide." 45 C.F.R. § 233.20(a) (2) (viii), 311 Fed. Reg. 1394 (Jan. 29, 1969)

(b) The standards of assistance and maximum grants adopted by the Legislature in Section 131-a do not apply uniformly nor are the discriminations in amounts granted based on any rational consideration of living cost. For example, the living costs of plaintiffs and their class who are residents of Nassau and Westchester Counties are as

high or higher than those experienced by residents of New York City, and public assistance grants to them were and are now equal. They will no longer be so under the new statutory scheme.

11. The reduction in the standard of need will render ineligible for aid needy, aged and disabled persons whose income and other resources were just below welfare standards and will now equal or exceed the reduced standard.

12. Unless this Court declares the reduction invalid and enjoins the implementation thereof, the aforementioned unlawful result will obtain on July 1, 1969.

V

Plaintiffs

1. (a) Plaintiffs are all citizens of the United States and reside in the Counties of Nassau and Westchester, State of New York. Plaintiffs bring this action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on their own behalf and on behalf of all individuals and families similarly aggrieved by the implementation of Section 131-a of the New York Social Services Law in violation of the Social Security Act and federal regulations.

Plaintiffs are members of a class of recipients of public assistance under the Aid to the Aged, Blind or Disabled program residing in Nassau and Westchester Counties and other urban or suburban counties other than those within the City of New York whose grants have been reduced below those of persons with identical need in the City of New York in violation of the Social Security Act and regulations promulgated thereunder, and the Fourteenth Amendment to the Constitution of the United States.

(b) Plaintiffs bring this action as a class action because the questions of fact and law are common to the plaintiffs and the class they represent, the members of the class are so numerous as to make joinder of parties impracticable, the claims of the plaintiffs are typical of the claims of all members of the class, the plaintiffs fairly and adequately represent the claims of all the members of the class, the defendant is acting on grounds generally applicable to the entire class, the questions of law and fact common to the class predominate over any questions affecting individual members, and class action will best provide for a fair and efficient adjudication of this controversy.

2. (a) Plaintiff Miller is a recipient of public assistance under the Aid to the Disabled program and receives from the Nassau County Department of Social Services, exclusive of rent and fuel, $730.59 per month computed as follows (May 1, 1969 Budget)

Basic needs (½ share)	$ 55.00
Phone	4.45
AABD allowance	5.00
Special diet	5.40
Homemaker (net)	556.92
Social Security for employer	28.08
Social Security for employee	28.08
Food for homemaker	47.66
$730.59	Total monthly assistance

(b) Plaintiff Rothstein is a recipient of public assistance under the Aid to the Aged program and receives from the Nassau County Department of Social Services $85.90, exclusive of rent and fuel, computed as follows:

Basic needs	[illegible]
Age Allowance	[illegible]
Telephone	[illegible]
Transportation	[illegible]
Extra Size Clothing	[illegible]
	[illegible] Total monthly assistance

In addition plaintiff Rothstein has pending a request for an additional allowance for a medically necessary special diet.

(c) Plaintiff Batson is a recipient of public assistance under the Aid to the Blind program and received on June 1, 1969 from the Westchester County Department of Social Services $166.70 (she also receives $[illegible] in Social Security benefits) computed as follows:

Pre-added allowance	$ [illegible]
Shelter	[illegible]
Aid to the Blind (Group II)	[illegible]
Allowance for AB	[illegible]
Special diet	[illegible]
Telephone	[illegible]
Food Delivery	[illegible]
Transportation for Housekeeper	[illegible]
Housekeeper	[illegible]
Seeing Eye Dog allowance (food)	[illegible]
Aid in Reading	[illegible]
Housekeeper lunch	[illegible]
	[illegible]
	—[illegible] (Social Security benefit)
	$[illegible]

3. Under the challenged law these plaintiffs will receive assistance at the lower rates provided for recipients residing outside New York City as set forth.

Plaintiff	*Current Monthly Grant*	*New York City Grant*	*Nassau/Westchester Grant*
Miller	$730.30	$70.00	$65.00
Rothstein	83.90	$70.00	65.00
Batson	166.70	68.75	58.75*

* Mrs. Batson's grant is shown here as it includes rent and utilities because of the difficulties in computing her budget in view of her Social Security income.

VI

Defendants

4. The defendant State Department of Social Services, under New York Social Services Law § 20, has primary responsibility for promulgating regulations and instituting procedures for the administration and distribution of public assistance in New York State, in accordance with the requirements of the federal Social Security Act, the Social Services Law of New York, and the Constitutions of New York and the United States.

5. Defendant George K. Wyman, as Commissioner of the Department of Social Services of the State of New York, has primary responsibility for the administration of that Department in compliance with the law. New York Social Services Law, § 34.

VII

As a first cause of action, plaintiffs allege:

1. Section 131-a violates the Social Security Act of 1935 and the regulations made pursuant thereto because it is

not a plan of *uniform statewide application* in that public assistance recipients in Nassau and Westchester Counties and other non-New York City areas are singled out for special, unfavorable and discriminatory treatment.

2. Section 1602(a) (1), of the Social Security Act, 42 U.S.C. § 302(a) (1), requires that a state plan "shall be in effect in all political sub-divisions of the state, and, if administered by them, be mandatory upon them." As interpreted by the Department of Health, Education and Welfare in its "Handbook of Public Assistance Administration" (the binding federal regulations of the United States Department of Health, Education and Welfare), the statute requires that the plan "shall . . . provide for administration in accordancee with standards that are mandatory and equitable throughout the State." (Pt. II § 4200(1) (1964).

3. On January 29, 1969 the Department of Health, Education and Welfare promulgated 45 C.F.R. § 233.20, 34 Fed. Reg. 1394, which provides in pertinent part:

§ 233.20. Need and Amount of Assistance

a) *Requirement for State Plans.* A State Plan for OAA, AFDC, AB, APTD OR AABD must, as specified below:

1. *General.* Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis. . . .

2. *Standards of Assistance.* (i) Specify a Statewide standard, expressed in money amounts, to be used in determining (a) the need of applicants and recipients and (b) the amount of the assistance payment.

. . .

iii. Provide that the standard will be uniformly applied throughout the State.

4. Although the legislative findings and purpose of the March 29, 1969 Act state that the reductions "will promote greater uniformity and equality of treatment," plaintiffs as residents of Nassau and Westchester Counties will receive substantially less public assistance under Section 131-a than persons identically situated but living within New York City.

5. The cost of living in Nassau and Westchester Counties is as high as in New York City. The United States Department of Labor in its statistical analysis of the cost of living makes no distinction between costs in New York City and neighboring counties. The same supermarket chains and department stores service both areas and charge substantially the same prices for all items including basic necessities in both New York City and Nassau and Westchester Counties. Certain other costs, such as transportation costs are higher in Nassau County.

6. Defendant Wyman recognized this absence of cost of living differential in promulgating Section 352.4 of Title 18 of the New York Code, Rules and Regulations which established identical standards of need for public assistance recipients living in New York City and Nassau and Westchester.

7. On information and belief, there was neither experience, information or evidence brought before either house of the New York State legislature, any committee thereof or before the defendants justifying or warranting a legislative or administrative finding that there was an actual cost of living differential between New York City and Nassau and Westchester.

8. Section 131-a is in direct violation of the federal requirement that standards will be uniformly applied throughout the State, in that it sets different and lower standards for residents of Nassau, Westchester and elsewhere without regard to their equal need, and therefore should be declared invalid and defendants should be enjoined from implementing a reduction of benefits pursuant thereto.

VIII

AS AND FOR A SECOND CAUSE OF ACTION:

1. Bulletin 134 and the schedules contained therein are in direct violation of the Federal requirement that standards will be uniformly applied throughout the state in that it sets different and lower standards for residents of Nassau, Westchester and elsewhere without regard to their equal need, and therefore should be declared invalid and defendants should be enjoined from implementing a reduction of benefits pursuant thereto.

IX

AS AND FOR A THIRD CAUSE OF ACTION, PLAINTIFFS ALLEGE:

1. Section 131-a establishes a procedure whereby residents of Nassau, Westchester and other areas outside the City of New York must make an affirmatiye showing of equal need to obtain benefits equivalent to those granted those similarly situated but residents of the City of New York. The statutory scheme prevents plaintiffs from obtaining a greater quantum of assistance even if a showing of greater need is made.

2. The legislative scheme shows a preference for residents of New York City and thus violates both the Federal

requirements that standards will be applied uniformly throughout the state.

X

AS AND FOR A FOURTH CAUSE OF ACTION:

1. There is no legitimate or rational purpose served by discriminating against public assistance recipients in the Aid to the Disabled program, the Aid to the Aged and Aid to the Blind programs, living outside of New York City, and more particularly in Nassau and Westchester Counties.

2. Section 131-a denies plaintiffs and all members of their class the equal protection of the laws in violation of the Fourteenth Amendment and therefore should be declared invalid.

XI

Plaintiffs have no adequate remedy at law. Defendant will continue to cause, and threaten to cause, irreparable injury unless enjoined forthwith.

WHEREFORE, plaintiffs respectfully pray on behalf of themselves and all others similarly situated that a three judge District Court be convened for the following purposes:

1. Enter preliminary and permanent injunctions enjoining the defendant, his successors in office, agents and employees, and all other persons in active concert and participation with them, from enforcing or taking any steps in any way toward implementing, and from putting into effect, as to the class, the system of "maximum monthly grants" and schedules of need prescribed by New York Social Services Law § 131-a, added by Laws Ch. 184, March 31, 1969,

as amended by Laws Ch. 411 May 9, 1969, on the ground that said grants and schedules are in violation of and inconsonant with the requirements of the federal Social Security Act and regulations promulgated thereunder.

2. Enter a declaratory judgment holding that New York Social Services Law § 131-a and the Rules, Regulations, Bulletins and Standards promulgated thereunder denies plaintiffs residing in the Greater New York Area but outside the City of New York rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the federal Social Security Act and regulations promulgated thereunder, insofar as the said Section 131-a provides greater benefits for persons in New York City than to persons outside the City of New York but in the Greater New York Area despite the similarity in needs and cost of living for the two groups of recipients, and otherwise invidiously discriminates against plaintiffs and their class.

4. (a) Allow plaintiffs their costs herein and grant them and all other persons similarly situated such additional or alternative relief as the Court may deem to be just and appropriate.

Respectfully submitted,

Lee A. Albert
Henry A. Freedman
Sylvia Ann Law
Lucy Katz
Center on Social Welfare
Policy and Law.

Allen Redlich
Attorney for Plaintiffs
Nassau County Law
Services Committee, Inc.

Avram Weisberger
Attorney for Plaintiffs
Legal Aid Society of
Westchester Co.

Order to Show Cause—Re: Preliminary and Permanent Injunctions and Convening of a Statutory Three-Judge Court.

LET defendants show cause in Courtroom No. 506 of the United States Courthouse, Foley Square, New York, New York, on the 1st day of July, 1969, at 10:00 A.M. or as soon thereafter as counsel may be heard why an order should not issue or the Court take such other action as shall grant the plaintiffs herein the following relief:

(1) A preliminary and permanent injunction restraining and enjoining defendant Wyman, his successors in office, agents and employees, and all persons in active concert and participation with them, from taking any steps toward implementing and from putting into effect the system of "maximum monthly grants" and schedules of need prescribed by New York Social Services Law § 131-a, added by Laws Ch. 184, March 31, 1969, as amended, May 2, 1969, Laws Ch. 411, under the Aid to the Aged, Blind or Disabled program.

(2) The convening of a statutory court of three judges for the purpose of hearing and determining this application for a preliminary and permanent injunction in accordance with the provisions of Title 28, United States Code, §§ 2281 and 2284.

(3) An order determining that this action may properly proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

LET the defendants further show cause why a temporary restraining order pursuant to Title 28 United States Code, § 2284 should not issue restraining the defendant, his successors in office, agents and employees, and all persons in active concert and participation with them, from taking any steps toward implementing and from putting into effect

the system of "maximum monthly grants" and schedules of need prescribed by New York Social Services Law § 131-a, as amended, pending the hearing and determination of plaintiffs' motion for a preliminary and permanent injunction by a three-judge court convened pursuant to Title 28, United States Code, § 2281 and § 2284.

Plaintiffs seek this temporary restraining order and preliminary and permanent injunction on the grounds that:

(1) Implementation of § 131-a, as amended, will result in a denial of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States and in a violation of § 1602(a)(1) of the Federal Social Security Act, 42 U.S.C. § 302(a)(1), and related sections and regulations promulgated thereunder.

(2) Plaintiffs are suffering, and are threatened with, irreparable injury in that as of July 1, 1969, the effective date of § 131-a, they will be without means to provide for themselves the basic necessities of food, clothing and essential medical care, as alleged in the annexed complaint and affidavits of Edna Rothstein dated June 11, 1969, Sylvia Miller, dated June 11, 1969, and Henrietta Batson, dated June 20, 1969. It is also alleged in the annexed affidavit of Allen Redlich, attorney for plaintiffs, dated June 20, 1969, that immediate action is required prior to implementation of § 131-a, on July 1, 1969, as mandated in said statute.

(3) The issuance of a temporary restraining order and preliminary injunction will not cause undue inconvenience or loss to the defendants, but will prevent irreparable injury to the plaintiffs.

(4) Plaintiffs have no adequate remedy at law, as set forth more fully in the complaint and the affidavits of

Order to Show Cause—Re: Preliminary and Permanent Injunctions and Convening of a Statutory Three-Judge Court.

Edna Rothstein, Sylvia Miller, Henrietta Batson and Allen Redlich attached hereto.

IT IS ORDERED that service of this Order on defendants at their New York City office at 270 Broadway, New York, New York, or upon the Attorney General of the State of New York, at his office at 80 Centre Street, New York, New York, on or before the 26th day of June, 1969, be deemed sufficient.

IT IS FURTHER ORDERED that service of this Order may be by any of the attorneys for plaintiffs in this action.

At the United States Courthouse, Foley Square, New York, this 25th day of June, 1969, at

s/ MORRIS LASKER,
United States District Judge.

Affidavit of Allen Redlich, in Support of Order to Show Cause.

ALLEN REDLICH, being duly sworn, deposes and says:

1. I reside at 16 Westminster Road, Syosset, New York.

2. I am an attorney with Nassau County Law Services Committee, Inc., located at 150 Old Country Road, Mineola, New York.

3. I am one of the attorneys for the plaintiffs herein and submit this affidavit in support of plaintiffs' motion for a Temporary Restraining Order and immediate convening of a three-judge District Court pursuant to 28 U.S.C. § 2281 and § 2284.

4. Plaintiffs seek a declaratory judgment that New York Social Services Law § 131, as amended, Laws Ch. 184 March 31, 1969, and § 131-a, added Laws, Ch. 184, March 31, 1969, as amended, Laws Ch. 411, May 2, 1969, violate the Social Security Act § 302(a)(1) and the regulations promulgated thereunder, specifically 45 CFR 5233.20, 34 Fed. Reg. 1394 and Handbook of Public Assistance, Pt. II § 4000 *et seq.* and the Fourteenth Amendment to the Constitution of the United States insofar as said sections have the effect of denying equal protection of the law to plaintiffs by affording to them a different and lesser quantum of public assistance than is afforded to others similarly situated solely because of their place of residence.

5. Plaintiffs assert that the Social Security Act compels the State of New York, a recipient of funds thereunder, to distribute public assistance under the Aged, Blind or Disabled Programs, "uniformly;" that differentials are permissible only where there is proven factual justification based on differences in cost; that in fact the cost of living in affluent suburban Nassau and Westchester Counties is

as high and in some instances demonstrably higher than the cost of living in neighboring New York City; and that accordingly, implementation of the statutory scheme violates plaintiffs' rights under the Fourteenth Amendment of the Constitution and under the Social Security Act.

6. On March 31, 1969, § 131-a of the New York Social Services Law was enacted. It substituted legislative standards of assistance for those currently in effect. It mandated that assistance be provided, effective July 1, 1969, exclusive of rent and utilities, as promulgated by the State Department of Social Services, on one level in New York City and at a lower level outside the city, as follows:

	Number of Persons in Household							
	1	2	3	4	5	6	7	Each additional
New York City	70	116	162	208	254	297	340	43
Outside New York City	60	101	142	183	224	257	290	33

7. As appears more fully in plaintiffs' Memorandum of Law submitted herewith, these standards alter substantially the structure of assistance payments now existing in New York State. Residents of New York City and of Westchester, Nassau and other metropolitan area counties who were in need received the same amounts of public assistance, based on a determination that living costs were the same for all those counties and the City of New York. The new schedules mandated grants for suburban recipients far below those available to New York City residents,

Affidavit of Allen Redlich, in Support of Order to Show Cause.

8. On May 2, 1969, the Legislature amended the new §131-a to permit the State Commissioner of Social Services to authorize higher or lower schedules in areas where costs of living varied from the costs reflected in the legislative schedules. No grants can exceed those established by the Legislature for New York City.

9. On or about June 5, 1969, defendant Wyman, the Commissioner of the New York State Department of Social Services promulgated a new schedule of grants, under which Nassau and Westchester recipients of Aid to the Aged, Blind or Disabled (and certain other suburban residents) will receive assistance as follows:

Number of Persons in Household							
1	2	3	4	5	6	7	Each additional
$65	$107	$149	$191	$233	$270	$307	$37

See Appendix to complaint herein.

10. These amounts remain significantly below New York City standards and below living costs in the counties where they are applicable.

11. Plaintiffs will submit proof pertinent to the claim of equal treatment on the following matters:

1) State standards of assistance currently in effect establishing that at the present time the same standards apply in New York City and in Nassau and Westchester counties. Indeed, the only difference statewide is utility costs.

2) Handbooks of the New York City and Nassau and Westchester County Departments of Social Services with

price guidelines indicating, if anything, that costs are higher in Nassau and Westchester counties.

3) A statistical analysis of public assistance expenditures which indicate that the monthly aid to each recipient as of October 1968 was significantly higher in Nassau and Westchester counties than the monthly aid to recipients in New York City.

4) A detailed analysis of transportation costs by the Director of the Nassau County Planning Commission establishing the high cost of transportation in Nassau County. (See affidavit of John Burdis attached to plaintiffs' Memorandum of Law.)

5) The fact that the Labor Department's Consumer Price Index treats the entire metropolitan area as one entity and does not even attempt to assess costs within that area. This is, of course, because both areas are serviced by the same major retail outlets, department stores, supermarkets, etc., who advertise and charge similar prices throughout the metropolitan area. This, together with the mobility of most of the urban-suburban population precludes price variations of any significance within the area.

12. Plaintiffs are recipients of aid under the federally reimbursed categorical assistance programs of Aid to the Aged, Aid to the Blind, and Aid to the Disabled. Plaintiff Edna Rothstein currently receives $85.90 a month in Aid to the Aged. Plaintiff Sylvia Miller receives $520.33 in Aid to the Disabled. Plaintiff Henrietta Batson receives $166.70 in Aid to the Blind. As of July 1, 1969, all will receive the flat sum of $65 per month, exclusive of rent and utilities. Similarly situated residents of New York City will receive $70.00.

Affidavit of Allen Redlich, in Support of Order to Show Cause.

13. These plaintiffs represent the class of recipients receiving Aid to the Aged, Blind or Disabled and residing in Nassau and Westchester counties.

14. The statutory scheme mandating these cutbacks will have disastrous implications for plaintiffs and their class, since they will lose a large proportion of their basic grants, plus vital special allowances for items such as medically required diets, and telephones, housekeepers and special transportation costs for the aged and ill. Plaintiffs are further denied that minimal assistance available in New York City, though their financial needs are as great as or greater than those of persons similarly situated in New York City.

15. Plaintiffs face very severe health hazards if their grants are reduced as scheduled under § 131-a. All will suffer irreparable injury if implementation of that statute is not enjoined.

17. Plaintiffs' claims under the Social Security Act and the Constitution are substantial. Defendants cannot demonstrate any justification for departing from the previous uniformity between New York City and suburban grant levels, nor for arbitrarily classifying Nassau and Westchester recipients as entitled to less than their New York City counterparts.

(Sworn to by Allen Redlich, June 24, 1969.)

Affidavit of Edna Rothstein.

EDNA ROTHSTEIN, being duly sworn deposes and says:

1. I reside at 65 Lincoln Boulevard, Long Beach, Long Island, New York, am over 65 years of age and am a recipient of Old Age Assistance and have been such for many years.

2. I am presently receiving from the Department of Social Services of the County of Nassau the sum of $83.80 per month in addition to the rent of my present housing accommodations.

3. My entitlement is computed as follows: Basic needs $66.80, an additional allowance of $8.00 because I am aged, an allowance of $4.45 for a telephone, an allowance of $4.45 for transportation for shopping made necessary by my physical condition, and an allowance of $3.10 because it is necessary for me to purchase extra clothing.

4. In addition to the allowance of $83.80 that I receive I have a request in for an additional allowance for a special diet which will be decided at a fair hearing that I have asked for. I presently receive medical care at Meadowbrook Hospital in East Meadow, Long Island, New York and am supplied transportation by the Department of Social Services on the frequent occasions when I must go to the hospital.

5. I am advised that on July 1, 1982 it is the intention of the defendants to reduce my allowance each month to $83.80. I will, therefore, suffer a loss of $3.00 exclusive of any loss I would suffer should my request for a special diet be granted. I am also unsure as to whether I will continue to be furnished transportation to Meadowbrook hospital when needed.

6. Should the cut in my allowance go through I will be unable to continue to subsist. I have difficulty in making ends meet at the present time and cannot conceive of continuing to maintain myself should the decrease of approximately 25% of my income actually be effectuated.

(Sworn to by Mrs. Edna Rothstein, June 11, 1969.)

Affidavit of Sylvia Miller.

Sylvia Miller being duly sworn deposes and says:

1. I reside at 76 Indiana Avenue, Long Beach, New York. I am 49 years of age and am a recipient of Aid to the Disabled which I receive from the Nassau County Department of Social Services.

2. At the present time I reside with my husband, Robert Miller, and my son, Robert T. Miller, who are recipients of home relief. My husband is employed but because of the medical condition of myself and my son we are unable to make ends meet on his salary and therefore are eligible for and have been receiving public assistance.

3. As of May 1, 1969 my budget as a recipient of Aid to the Disabled was as follows:

Basic needs (2 shares)	$ [illegible]
Home	4.45
AA/DD allowance	[illegible]
Special diet	[illegible]
Home maker (pct)	[illegible]
Social Security for employer	[illegible]
Social Security for employee	[illegible]
Fund for homemaker	[illegible]
	$730.59 Total

4. As of May 20, 1969 the Department of Social Services notified me that the allowance for a homemaker would be reduced to $80 per week or $346.66 per month. I dispute this reduction and this matter is presently being handled by my attorneys.

5. The reason that I need a homemaker is because I am presently confined to a wheelchair, am under constant medical attention because of a cardiac condition, numerous other conditions which have required surgery and because of medical conditions as yet undiagnosed.

6. I am advised that on July 1, 1969 I will receive in excess of rent only the sum of $65.00 per month. I have been able to obtain no assurance that the homemaker service will be continued.

7. I am also advised that the amounts provided for my husband and son will also be reduced; and that they will be unable to obtain any grants of assistance for their special needs.

8. I will be irreparably harmed should the new welfare law go into effect on July 1, 1969. I am unable to cope with the problems of life without the special attentions of a homemaker. At the very least my husband will be forced to leave his employment to stay home and care for me.

9. I urge this court to grant relief as requested.

(Sworn to by Sylvia Miller, June 11, 1969.)

Affidavit of Henrietta Batson.

HENRIETTA BATSON, being duly sworn, deposes and says:

FIRST: That I am Sixty-eight (68) years of age and am totally blind. I have been partially blind since 1950 and totally blind since 1966. I also suffer from coronary insufficiency and chronic bronchitis.

SECOND: That I live alone at 49 North Ninth Avenue, Mount Vernon, New York, and do not have any relatives in that city.

THIRD: That my June 1969 budget from the Mount Vernon office of the Westchester County Department of Social Services is as follows:

Pre-added allowance	$ 66.00
Shelter	108.00
Aid to the Blind (Group II)	12.00
Allowance for AB	8.00
Special Diet	11.35
Telephone	6.60
Food delivery	4.30
Transportation for Housekeeper	2.17
Housekeeper	32.47
Dog allowance (food)	12.00
Aid in Reading	8.66
Housekeeper lunch	1.95
Total	$273.50

Inasmuch as I receive Social Security benefits in the amount of One Hundred Six Dollars and Eighty Cents ($106.80), the amount of money which the Department of Social Services has given me for the month of June 1969

is One Hundred Sixty-six Dollars and Seventy Cents ($166.70).

Fourth: A) That I need a special grant for aid to the blind and an allowance for AB totaling Twenty Dollars ($20) to enable me to pay for a guide so that I might be able to leave my apartment to go shopping for personal effects or to visit acquaintances and to purchase meals for myself while I am away from my apartment and to provide transportation so that I can reach my destination.

B) That I need the special grant for a special salt free, fat free beef diet as I have a coronary insufficiency and this diet has been prescribed by my physician, Dr. Lincoln Stulik of 103 Stevens Avenue, Mount Vernon, New York.

C) That I need the special allowance for a telephone as I live alone, do not have any relatives living nearby, and must have a telephone in case of an emergency to call for help.

D) That I need the special allowance for food delivery as I live on the second floor. There is no elevator and because of my heart condition it is impossible for me to carry up the stairs the food items which I purchase. The store from which I make all my purchases delivers once a week and charges One Dollar per delivery.

E) That I need the special grant for aid in reading to enable me to hire a person for two hours a week to read my mail and to assist me in writing for records containing books and magazines so that I might keep my mind alert.

F) That I need the special grant for a housekeeper to clean my apartment as my blindness prevents me from cleaning up myself.

G) That I need the special grant for housekeeper lunch to enable me to provide lunch for the housekeeper who

comes once a week to clean my apartment. The housekeeper will not clean if I do not provide lunch for her.

H) That I have a seeing eye dog and I need the special allowance for food to feed him.

FIFTH: That on or about June 6th, 1969, Miss Patricia Doyle, my caseworker at the Mount Vernon office of the Westchester County Department of Social Services, telephoned me and notified me that as of July 1969 my budget would be limited to the following:

Pre-added allowance	$ 65.00
Shelter	108.00
Total	$173.00

Inasmuch as I will receive Social Security benefits of One Hundred Six Dollars and Eighty Cents ($106.80), I have been told that I will receive a grant from the Westchester County Department of Social Services of Sixty-six Dollars and Twenty Cents ($66.20) and that Thirty-six Dollars and Sixty Cents will be issued directly to the housekeeper to cover her wages, transportation and lunch.

SIXTH: That I will be irreparably harmed should the new Social Services law go into effect.

A) That I will be unable to leave my apartment without the extra aid to the blind which enables me to hire a guide to allow me to safely walk the streets and arrive safely at my destination. Without which, I will be unable to visit acquaintances or make purchases for personal effects.

B) That I will live in constant fear of an emergency as I will be totally cut off from the world without a telephone.

C) That I will be unable to exist without having food delivered to me. Due to my heart condition, I cannot carry items up a flight of stairs myself.

D) That I will be unable to cope with life without having a reader. Without a reader, I will be totally cut off from the world and I will not be able to read my mail or to apply for books and records to keep myself mentally alert. I feel that I will deteriorate mentally.

E) That I will be unable to exist in my apartment without the aid of my seeing eye dog if I am not given funds with which to purchase food for him.

SEVENTH: That the above affidavit was read aloud to me on June 20th, 1969, in my apartment by Avram Weisberger, Esq., and I acknowledge that all statements contained therein are true.

Dated: June 20th, 1969, Mount Vernon, New York.

(Sworn to by Henrietta Batson, June 20, 1969.)

Decision and Order Convening the Three-Judge Court (Motley, J.).

Plaintiffs seek preliminary and permanent injunctions and declaratory relief against the "maximum monthly grants" and schedules of need prescribed by New York Social Services Law § 131-a, added by Laws Ch. 184, March 31, 1969, as amended by Laws Ch. 411, May 9, 1969, in connection with federally assisted programs of aid to the aged, blind and disabled. Plaintiffs sue on behalf of a class composed of aged, blind and disabled persons aided by these programs and resident in suburban counties outside the New York City limits, including Westchester County which is within the Southern District of New York.

Plaintiffs claim that the new provisions of the Social Services Law irrationally and invidiously discriminate against members of their class in violation of the Social Security Act, 42 U.S.C. § 301 et seq. and the Fourteenth Amendment to the United States Constitution because grants under these programs in the counties of plaintiffs' residence are lower than equivalent grants in New York City despite data indicating that costs of living in plaintiffs' counties are at least as high as in New York City.

The action is before this court on plaintiffs' motion to convene a three-judge court pursuant to 28 U.S.C. § 2281 et seq. Plaintiffs claim that their motion for a preliminary injunction must be heard and determined by a three-judge court because of the federal constitutional issues raised. Only a three-judge court may enjoin the enforcement or execution of a state statute as unconstitutional, and such a court must be convened where the constitutional issue or issues are not wholly insubstantial. *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U. S. 713 (1962).

An action similar to this was brought recently in the Eastern District of New York, making identical claims (and others not here relevant) with respect to these new Social Services Law provisions *prior to* their May 9

amendment in connection with the aid program for dependent children, *Rosado* v. *Wyman*, 69 Civ. 355. The constitutional claims were held not insubstantial by the single District Judge, *Rosado* v. *Wyman*, —— F. Supp. —— (E.D.N.Y., April 24, 1969), and by the three-judge court when convened, *Rosado* v. *Wyman*, —— F. Supp. —— (E.D.N.Y., May 12, 1969).

However, the New York Legislature amended the new provisions on May 9, 1969, to allow the Social Services Commissioner and local social services officials to increase benefits in counties outside of New York City up to the New York City level. The three-judge court then held the constitutional attack moot and not ripe for adjudication by that court "until there has been an opportunity for action by state officials and until the matter comes before this Court in an appropriate proceeding," *Rosado* v. *Wyman*, *supra*, at ——— (May 12, 1969).

Plaintiffs now claim that the defendant Commissioner has utilized the opportunity given him by that three-judge court in that he has promulgated a new schedule of grants in plaintiffs' counties. However, it is alleged that this new schedule provides benefits still well below the New York City level without rational justification and that the constitutional issues are now ripe for adjudication.

The court agrees, and, accordingly, the motion to convene a three-judge court is granted, and the case is referred herewith to the Chief Judge of the Circuit. 28 U.S.C. § 2284.

Dated: New York, New York, July 7, 1969.

So Ordered:

Constance Baker Motley

Constance Baker Motley

U. S. D. J.

Answer.

Defendants, by their attorney, Louis J. Lefkowitz, Attorney General of the State of New York, as and for an answer to the complaint herein, respectfully allege:

As to plaintiffs' statement of claim:

First: Deny knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "11" and in the second sentence of paragraph "3", and in the first sentence of paragraph "8(c)".

Second: Deny each and every allegation set forth in paragraph "12" and paragraph "10(b)".

Third: Deny each and every allegation set forth in paragraph "9", except admit that Social Services Law, § 131-a abolished special grants for welfare recipients.

As to plaintiffs' first cause of action

Fourth: Deny each and every allegation set forth in paragraphs "1", "6", "7" and "8", and in the first sentence of paragraph "5" thereof.

Fifth: Deny knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "4" and in the fourth sentence of paragraph "5" thereof.

As to plaintiffs' second cause of action

Sixth: Deny each and every allegation set forth in paragraph "1" thereof.

Answer.

As to plaintiffs' third cause of action

Seventh: Deny each and every allegation set forth in paragraph "2" thereof.

As to plaintiffs' fourth cause of action

Eighth: Deny each and every allegation set forth in paragraphs "1" and "2" thereof.

As and for a first complete defense, defendants allege:

Ninth: That this Court lacks jurisdiction over the subject matter herein.

As and for a second complete defense, defendants allege:

Tenth: That in an action instituted in the United States District Court, Eastern Dristict of New York, entitled *Rosado* v. *Wyman*, 69 Civil 355, alleging the precise question sought to be raised here, a three-judge court was convened by order (Weinstein, J.), dated April 24, 1969, and that three-judge court dissolved itself by order dated May 12, 1969 holding this question moot and not ripe for adjudication since Social Services Law § 131-a had been amended so as to permit county social services administrators to apply for an increase in welfare payment levels up to and including the New York City rate set forth in the statute. The Court held that this provided an expeditious state remedy for any person aggrieved through an Article 78 proceeding to compel such action by a local Social Services Department, and that therefore the issues raised were unripe for determination in the Federal

Courts. The order dissolving that three-judge court is presently on appeal to the United States Court of Appeals, Second Circuit.

ELEVENTH: That this decision is binding, or if not binding, highly persuasive precedent holding that the issues sought to be litigated here are unripe for adjudication.

AS AND FOR A THIRD COMPLETE DEFENSE, DEFENDANTS ALLEGE:

TWELFTH: That the very issue of the conformity of § 131-a to federal regulations, sought to be raised here, is presently being considered in an administrative proceeding within the United States Department of Health, Education and Welfare.

THIRTEENTH: That said Department of Health, Education and Welfare has primary jurisdiction over this issue and that this Court thereof lacks jurisdiction over the instant action.

AS AND FOR A FOURTH COMPLETE DEFENSE, DEFENDANTS ALLEGE:

FOURTEENTH: That a rational basis exists for the disparity in maximum monthly grants and allowances as between New York City and the remainder of the State of New York.

WHEREFORE, defendants respectfully request judgment dismissing the complaint.

Louis J. Lefkowitz,
Attorney General of the
State of New York,
Attorney for Defendants

Deposition of George K. Wyman, Taken by the Plaintiffs

(It was agreed that the signature of the witness to the deposition is waived.)

Proceedings of Hearings N. Y. Housing Authority by the Housing Officials, having been first duly sworn by the Notary Public, testified as follows:

Examination by Mr. Allport.

Q. Mr. Wyman, before Section 121-a of the Social Services Law, there was a division regarding grant levels of the State into three districts, is that correct? A. That is correct.

Q. Those districts were labelled SA-1, SA-2 and SA-3? A. Correct.

Q. And for how long did these divisions exist, to your knowledge? A. For the entire time that I have been in the Commissioner's office, to my knowledge.

Q. SA-1 was comprised of New York City and what other counties? A. Rockland, Putnam, Westchester, Nassau and Suffolk Counties.

Q. And the amounts in these schedules in SA-1, -2 and -3 were formulated by your department? A. That is correct.

Q. In accordance with the standard budget system amounts to provide a standard of living consistent with health and decency? A. Yes, meet Federal requirements.

Q. And there were differences between the amounts in SA-1, -2 and -3, is that correct? A. That is right.

Q. And were those differences based upon a desire to give certain people more money than other people? A. On the basis of the cost of living in those areas, a variation due to the variation cost between those geographic sections of the State.

Q. The differences between those were entirely due to utilities costs? A. Yes.

Q. What is considered to utilities? A. Electricity, water and, if that is provided, for cooking purposes, things normally considered utilities.

Q. And hence that reflected an element of giving people

the exact same amount of purchasing power, is that correct? A. The content would be the same, yes.

Q. Did your department undertake an analysis of the cost of utilities in the various counties? A. Annually.

Q. Annually. And did you examine the cost of utilities in each and every county in the State of New York? A. On the basis of the utilities service areas. Different companies serve a number of counties and so their rates would be the same in these areas. The rate would be the same for several counties.

Q. Were the costs of other items ascertained to correlate to the amounts? A. Annually.

Q. Can you explain how the cost of food in the various counties were ascertained? (5) A. By using the U. S. Department of Agriculture minimum adequate budget standards and pricing needs in the various parts of the state both in chain stores and in neighborhood stores.

Q. In what parts of the state were they priced? A. I can't give you the precise.

Q. Would it refresh your recollection if I say New York City and Buffalo? A. At least those two, yes.

Q. Does it refresh your recollection if I say not rural counties or, indeed, not other places but New York City and Buffalo? A. No.

Q. Does it refresh your recollection if I say that the food prices were taken by averaging the prices in New York City and Buffalo and only those two places? A. No.

Q. It is your impression that food prices were not determined in counties by county basis? A. That is correct.

Q. A certain amount of averaging was accordingly done? A. Oh, certainly.

(6) Q. And the food component of the grant levels in SA-1, 2 and 3 was the same for all counties, is that correct? A. That is correct.

Q. So that food prices in New York City and food prices

in Duluth were deemed to be the same in computing for grants? A. As far as the content is concerned, yes.

Q. The amount? A. Yes.

Q. And was there a pricing of other items contained in the component items of the grant? A. Yes; clothing, for example.

Q. And on what basis was the pricing of clothing done? A. Same basis. In other words.

Q. Not county by county? A. No, but obviously certain items of clothing are needed everywhere in the state and those we found, generally speaking, were comparable costs regardless of where the people lived.

Q. Would the same be true for furniture? A. Oh, yes.

Q. And the same would be true for (7) transportation? A. Not necessarily.

Q. Was it true we are now talking of SA 1, 2 and 3 before March, 1967? A. Yes.

Q. Was the amount of transportation deemed to be the same throughout the state? A. No.

Q. So that another element of variation between SA 1, 2 and 3 were transportation in addition to utilities? A. Most certainly.

Q. What other elements were not deemed to be uniform throughout the state and accordingly, affected the amounts of schedules 1, 2 and 3? A. Rent and fuel for heating.

Q. And were there other elements? A. Any other elements would be considered as special need items and they would reflect whatever the actual cost of the item might represent. For example, the necessity for someone to travel some distance to a hospital for clinic purposes.

Q. There were items of special need that pursuant to schedules drawn up by the local social (8) service district? A. If there had a local equivalent that received the approval of the State Department of Social Services, then that was used.

Deposition of George K. Wyman, Taken by the Plaintiffs.

Q. So that the local schedules that did exist for items of clothing, for example, or transportation in New York City, Nassau and Westchester were submitted to you? A. The items of basic need that we talked about that are shown on the SCA-1, 2 and 3 are uniform. I am talking about the variations in the special need items.

Q. Items of furniture and clothing were special need items? A. Yes, some items of clothing, yes; not all.

Q. And some items of furniture? A. And some items of furniture.

Q. And you are aware that the New York City Department drew up an extensive list with prices of items of clothing and furniture? A. That's right.

Q. And that was done also by the Westchester County Department? (9) A. I believe so.

Q. And the Nassau County Department, and they were submitted to your department? A. Yes.

Q. All the items reflected in them were dealt with previously as items of special grants? A. Right, as far as I know.

Q. Are you aware that in that list every conceivable item of clothing for an infant of one month old to an adult is included, in the list in New York City? A. I haven't seen that schedule.

Q. Is it conceivable that the list would be comprehensive? A. Yes.

Q. Did someone in your department examine these lists to see that they conformed to any state standard? A. I assume that did.

Q. Would the policy of your department be for them to examine it? A. In order for us to give approval, naturally they would have to be examined and approval granted. So I assume this was done.

(10) Q. And if these lists were used to compute special grants by the various local social services districts, presumably they were approved? A. Oh, certainly.

Q. Looking to the schedules prior to 131-a, SA-1, 2, 3, they reflect differences based on the age of the oldest child in the family, is that correct? A. That is correct. There are nine age groupings, if I recall correctly.

Q. Why do they so reflect that? A. Because it was felt that the food or the clothing requirements of children at various stages of growth required these considerations.

Q. Was the theory that older children needed greater amounts of food or greater amounts or more expensive clothing? A. Oh, yes.

Q. But there is a set amount for adults in each of the four categorical assistance programs? A. It is the same amount, yes.

Q. In regard to the differences between SA-1, 2 and 3, are you aware of approximately how much they were; the differences between the amount for one adult, for example, in SA-1, 2 and 3? (11) A. I can't—I don't recall.

Q. I submit to you what is labelled SA-1, 2, and 3 and ask you to examine it (handing).

Mr. Hoffman: I would like to make it clear that this is a former schedule.

Mr. Albert: I think it is clear.

Q. Are these schedules SA-1, 2 and 3 before you? A. Yes.

Are these the most recent ones prior to that date? I don't think they are. This is dated June, 1963.

(Discussion off the record.)

Q. You now have before you a copy of schedules SA-1, 2 and 3? A. Right.

Q. And the difference in the one adult category between one, two and three, you have how many dollars? A. $3 each for the adult.

Q. In each, going from one schedule to the next? A. Yes, starting with 60, 63 and 66.

Q. And using the amounts for two-person and (12) three-person families with the oldest child five years and under, what differences between SA 1, 2 and 3 are reflected in two-person families? A. That appears also to be $3 each; 88, 91 and 94.

Q. And three-person families, the same category? A. Here we have $3 and $2; that is 105 and 107.

Mr. Hoffman: The question was three-person families, was it not?

Mr. Albert: That is correct.

A. I stand corrected.

It is $3 each for the three-person family.

Q. Let me now skip to the six-person family and ask what the difference is there? A. It is $4 in the one case and $3 in the other. Is that correct? 204, 200 and 197.

Q. And now to the eight-person family regarding the same differences, please? A. Eight-person is $3 and $4.

Q. Would that generally be true if we went to other categories of oldest children respectively and went through the same series with oldest child (13) 14, for example? A. I presume so, because the schedule is generally related across the board.

Q. It is accurate to say that the differences between SA 1 and SA 2 range from $2 to $4 and similarly between SA 2 and SA 3? A. That's right.

Q. Regardless of size of family? A. Regardless of size of family.

Q. Those differences are accounted for by, it was your testimony, I believe, relative differences in the cost of utilities and transportation and that's all? A. That is correct.

Q. How can it be explained that those differences remain the same in a one-person family and a nine-person family if they are accounted for by utilities and transportation?

A. Because in utilities you don't heat people, for example, or you don't light people. You light rooms and you heat rooms, and on the basis of the size of the living facility, you have variations in cost of the utilities, not in the cost of people who occupy them.

(14) Q. Do your rent schedules reflect different rents for the one-person family and the nine-person family or are they the same? A. They are different, depending upon the size of the family.

Q. Is the assumption there the size of the apartment for a nine-person family must be considerably larger than a one-person family? A. None nine times larger.

Q. Considerably, I said. A. Considerably, yes.

Q. And the rent must be considerably higher? A. Naturally.

Q. Does the experience reflect these utilities would be the same? A. No.

Q. Transportation is used by people? A. Yes.

Q. And the transportation differences between counties for nine people is no greater than the transportation differences between counties for one person? A. What is the extent of the component of transportation? If I stated earlier that this (15) simplified allowance schedule included transportation, that was in error.

Q. I am not talking of the simplified allowance schedule at all. I am speaking of SA 1, 2 and 3 before March, 1962.

I asked you what accounts for the differential between 1, 2 and 3. A. I said utilities.

Q. And then you said transportation.

Now, you may withdraw that, if you like. A. I should withdraw it because the simplified allowance schedule is stated here. Food, clothing, personal incidentals, household supplies, school expenses, utilities, laundry and sales taxes. No mention is made of transportation in here.

If I did so state, that was incorrect.

Mr. Hoffman: I would like to, for the record, interject an objection here on the grounds of relevancy. What is the relevancy to the cause of action alleged in your complaint insofar as these differences in appropriations for particular sizes of family? I thought the problem here was—

Mr. Albert: I think it will be the Commissioner's testimony, and the affidavit of Mr. (16) Chesebro reflects, the new schedules are in some way based upon these schedules.

A. That is correct.

Mr. Albert: Accordingly, the components and the reasons for the differences in these schedules reflect upon the differences in the new schedules.

Mr. Hoffman: Couldn't we just get to that point?

Mr. Albert: We will as soon as we establish what is in these schedules. We will be very rapid, if you let me.

Q. So that is a 1, 2 and 3 before me prior to March 1969, had no component for transportation at all? A. As far as I can see, no.

Q. How were people to transport themselves from one place to another? A. On a special needs basis.

Q. There was a special needs grant for every bus trip a person took? A. No.

Q. Was it not the special needs grant— A. If they established the need for regular (17) attendance at a clinic, something on a repetitive basis, then this was granted.

Q. If the transportation was neither medically related nor a trip to visit an institutionalized relative nor employ

ment, what special grant was available for ordinary transportation? A. I don't believe there was any. There wasn't any.

Q. It was assumed if one engaged in such a luxury, they would use this money to do so? A. That is correct, or the good will of some friend or neighbor would transport them.

Q. Now assuming you are correct that only utilities are involved in the differences between 1, 2 and 3, was there a study made by your department showing that utility variations—gas, electricity, water—remained fairly constant for the one-person and eight-person family? A. The differences?

Q. That is, the differences were based on an assumption that in counties in SA-3 utilities cost less per given quantity than utilities in counties in SA-1? A. Yes.

(18) Q. Has that changed in the past year? A. Not to my knowledge, although we haven't made any pricing of utilities since May of 1968, which is the date these schedules were priced out at.

Q. These schedules reflect your pricing at May 1968 in the cost of utilities? A. Right.

Q. And at that time was there a study made to sustain the proposition the differences in cost of utilities remained the same, constant, regardless of family size? A. Rounded to the nearest whole dollar, yes.

Q. There was a study made that utilities—let's be concrete.

In Allegheny County in SA-3; utilities cost less than in New York City, is that correct? A. Yes, in the western part of the state they cost less because they have natural gas available.

Q. And you mean by that water, gas and electricity, do you not? A. Essentially fuel for cooking.

Q. Fuel essentially for cooking? A. Is less in those

eight western counties (19) of the state because of the natural gas rates than in other parts of the state.

Q. And that difference— A. Is reflected in the schedules.

Q. To the extent of $6 a month for one person between New York City and Allegheny? A. Yes.

Q. That doesn't change with the number of people in the family? It does try one's common sense to understand how a $6 differential for one person in New York City and Allegheny remains a $6 differential for ten people in Allegheny and New York City. One does think that a ten-person family cooks a lot more than a one-person-family.

I am trying to save time and get at the root of my question.

Do you agree with that, Commissioner Wyman?

Mr. Chesebro: I think the Commissioner is confused. I am sure you want the record to show the truth.

Mr. Albert: You are not under oath.

Mr. Chesebro: I am speaking to you.

Mr. Albert: You are not speaking to me.

(50) You are speaking on the record. If you want to testify, he may put you on afterwards and I will allow this deposition to proceed to be expanded.

I am leaving the question in order to avoid delay.

Q. Turning to the study of May 1968, and the schedule in PA 1, it was found that Nassau, Suffolk, Monroe, Greene, Dutchess and Westchester and New York City had approximately the same utility costs? A. Right.

Q. And that is why they were grouped together? A. Yes.

Q. Turning to Section 131-a, enacted by the New York Legislature in March 1969, did your department consult with the legislature with regard to that legislation? A. At their request.

Deposition of [illegible]

Q. Did you undertake a cost study of items throughout the state to assist the legislature? A. No.

Q. Did you undertake any cost study? (2) A. No, other than the information contained in MV A 1, 2 and 3 at that time.

Q. You didn't review that — A. No.

Q. — or perform a new cost study before the March legislation?

I understand.

And the new schedules in 1981 do what, as enacted March 31, 1982? A. I assume you are familiar with the provisions of the statute. What it does is write into the statute the amount of maximum benefit representing the costs of living or the costs of care of people for New York City in dollar amounts, written into the statute.

Q. And for the rest of the state also? A. And for the rest of the state it authorizes the Commissioner to establish a rate and variance.

Q. We are talking of the original 181 as enacted March 31, prior to an amendment that came in May. A. That's correct.

Mr. Hoffman: Why is that relevant to this?

[illegible]

A. It also sets up an amount, dollar amount for each of the rest of the counties of the state.

Q. When you say "sets up," do you mean all of them together? A. Averaged New York City.

Q. In your knowledge, did the legislature undertake, without your consideration or testimony, a cost of living study of the component items throughout each county in New York State?

Mr. Hoffman: I object.

Q. To your knowledge? A. Not to my knowledge.

Q. And you were not asked to do that yourself, were you? A. No.

Q. I am going to back-up just for a moment. In August, 1968, there was a demonstration project initiated for New York City establishing a flat cyclical grant of $100 per person per year? A. Correct, except for persons living alone, I think it was, in home relief cases. They were the ones excluded from the cyclical payment, single persons. There was some group excluded. In any event, (23) the majority of the people were excluded.

Q. That would include people in the program of the Aid to the Aged, Blind or Disabled? A. That is correct.

Q. That cyclical grant was to cover what items of need? A. Cover clothing and furniture.

Q. In other words, the special grants continued? A. Yes.

Q. And those items outside of New York City were covered by what mechanism? A. On an individual special needs basis.

Q. Was that continued after the demonstration project in New York City? A. Right.

Q. Was the permission of H.E.W. to institute this project in New York City sought or obtained? A. Yes.

Q. Why? A. In order to provide a variation between what was being done on a standard basis across the state and what was being done as a project in New York City, plus the fact that additional Federal funds (24) were involved in the project.

Q. Would it help your recollection to say that the application for the grant specifically stated no additional funding was sought? A. You mean over and above what would otherwise have been expended?

Q. The representation was that this was not an application for additional Federal financing or participa-

tion and the cost of this would be approximately the cost of the former system now administered differently? A. I beg your pardon. You are correct.

Q. Did H.E.W. approve that? A. Yes, it did.

Q. For the reason it provided merely a different method of meeting need but not meeting different needs? A. That and the fact that we wanted to test the equity of providing this for all persons as a simplified method of meeting those needs.

Q. Turning to the two schedules contained in 131-a as originally enacted in March 1969, the schedule for upstate New York outside New York City was based on what previous schedule?

(25) Let me back up.

Is it not a fact that the method used was to do away with age differentials, was to take the mean age of the oldest child in each size family? A. Yes, but that wasn't your earlier question.

Q. No, I am just backing up. A. Yes, that is correct.

Q. What was turned to for upstate New York to reflect the amount in that size family? A. That would be SA-3.

Q. And that was the lowest upstate standard, is that correct? A. That is correct.

Q. And the amounts in the schedule for New York City reflect, based on the same methodology, what schedule? A. Reflects SA-1 plus an allowance for transportation.

Q. And how much for each person? How much is the allowance added to SA-1 for the New York City schedule? A. The median at 191 plus $17 for four. About $4 per month per person, roughly.

(26) Q. And the cyclical grant of $8.33 per person per month was abolished in this legislation? A. That is correct.

Q. And special grants throughout the state were abolished by this legislation? A. That is correct.

Q. And there is no $4 per person per month transportation amount added to the schedules for outside New York City? A. That is correct.

Q. And counties formerly on SA-1 aside from New York City were now transferred to SA-3? You just said that? A. Yes, March 31st.

Q. In this legislation; I talk now only of that legislation. A. That is correct.

Q. After this legislation was enacted, did you undertake a cost analysis of counties in New York State? A. No.

Q. What items of need are covered by 131-a as enacted? A. The statute specifies—

(27) Mr. Albert: If he doesn't know the answer, he can say he doesn't know the answer.

A. I don't recall its language, but it outlines what it is to cover.

Q. But based on your department's discussions with the legislature, is it your understanding it covers all items of need? A. Right.

In addition, we have made arrangements for the purchase of service.

Are you going to ask me questions about this?

Q. I might. Purchase of service of certain items that were formerly special grants? A. Yes.

Q. But not furniture or clothing? A. Not furniture or clothing nor transportation.

Q. All items of furniture and clothing and transportation are covered by the amounts set out in the legislative schedules as amended, is that correct? A. That's right.

Q. And in your opinion, are these schedules based, then, upon the cost to recipients purchasing (28) all their component items of need contained in the standard? A. As of May, 1968, when the pricing was done.

Q. Do you understand the reason for taking the counties formerly subsumed under SA-1, the New York standard, and moving them to SA-3 in 131-a, as enacted? A. No, I don't.

Q. That was not a recommendation of yours? A. No.

Q. After the enactment, you were authorized to approve a lowering of grant schedules upon application of the local social service department, is that correct, after enactment March 31st? A. Yes.

Q. Did you receive any? A. No.

Q. Did you undertake any studies preparatory to approving or not approve any such applications? A. No.

Q. Then in May, 1969—May 12th, to be precise, you received authorization yourself to increase or lower grants outside New York City? (29) A. The law was amended.

Q. That's correct. A. Yes.

Q. You were authorized, under this law, to do so, is that correct? A. Correct.

Q. Did you then undertake studies of living costs in the counties in New York State? A. Not as of that date.

Q. When did you begin to undertake such studies? A. We used the schedule already in existence based upon the May 1968 pricing to determine the levels to be established in the rest of the state.

Q. You made no separate, new study? A. No new study was undertaken.

Q. You used the data gathered for, and which underlay the schedules promulgated in May 1968? A. Yes.

Q. And based on that data, no counties were lowered? A. None.

Q. In using that data you made adjustments to various counties? (30) A. Based upon the schedules previously in effect or in effect at that time, yes.

Q. And you created a schedule now called SA-1, which includes all the counties previously on SA-1 with the ex-

ception of New York City? A. That is correct. Greene County, I guess, is not—SA-1 is New York City.

Q. I will restate the question. That schedule I just mentioned is now SA-2? A. That is right.

Q. Which includes all the counties with New York City previously on SA-1? A. That's right.

Q. And you also created a schedule called SA-3? A. Yes.

Q. Which contains all the counties previously on SA-2? A. Right.

Q. And you created a schedule called SA-4 which contains all the counties previously on SA-3? A. That's right.

Q. The differences now between New York City and the newly labelled SA-2 counties amount to approximately $5 a person?

(31). Mr. Hoffman: I think the schedules speak for themselves.

A. For one person, it is $5, that is correct, approximately so.

Q. So the smaller units are 4 and in the larger units they become 5 again? A. Yes.

Q. And this is a progressive difference accumulating with each person? A. Yes.

Q. That, of course, is unlike the former difference, the difference under the former schedule? A. That's right.

Q. —which is a flat amount established for the one person and the same for six persons; they are now graduated? A. That's right.

Q. And that would also be true of the new schedules 3 and 4? A. Yes.

Q. What were the materials in the May 1968 studies which dictated a very different result in the May 1968 schedules, which were not progressive, that told you to create these progressive differentials?

(32) Mr. Hoffman: I object to that question. Why is that relevant to the whole thrust of this lawsuit, which is the difference in levels between New York City and the surrounding areas?

Mr. Albert: The thrust of the lawsuit is the basis for those differentials in levels. They are either justifiable or not.

Mr. Hoffman: But what you are talking about is the difference in level between different size families. That's my understanding of your question. You are not talking about the county differentials, you are talking about the family size differentials.

Mr. Albert: The Commissioner has testified that the differences in his own promulgated schedules in June were based upon data gathered in May, 1968, that data having given rise to the data in May 1968.

Q. Is that right, Commissioner? A. Yes.

Mr. Albert: Accordingly, I am asking the Commissioner what is the data in those schedules which gave rise to the new differentials between the newly labeled schedules 1, 2, 3 and 4.

(33) Mr. Hoffman: Would you specify whether you mean—

Mr. Albert: I left out the progression.

Mr. Hoffman: Would you specify whether you mean the family size differential or the geographic differential? Which differential are you talking about?

Q. I am talking about the differentials, and you may specify, between SA-1, 2, 3 and 4 as you promulgated them in June 1969. What data in 1968 told you to set these figures and establish these differentials? A. Essentially the same data that was provided out of the May 1968 pric-

ing, geographic differentials being exactly what it had been before with relationship to costs of utilities representing the variations in geography.

Q. But the cost of utilities before reflected a constant figure regardless of size of family, the cost of utilities now reflects a progressive increase of a considerable sort in each respective schedule 2, 3 and 4? In other words, what led you to believe that utilities costs increased per person by an exact amount when in May 1968, you believed quite the (34) contrary?

Mr. Hoffman: I object to the relevancy of that question. What you are talking about is a differential between utility costs per person, and it seems to me that the lawsuit is saying that there is a geographic differential based on area.

Mr. Albert: SA-1, 2, 3-4 are geographic differentials be they per person or per family. I am asking for the basis of those differentials, which is at the heart of this lawsuit.

I don't think the question is at all irrelevant to ask why the same data in May 1968 gave rise to a uniform differential between each schedule regardless of size of family and now gives rise to a progressive differential depending wholly upon size of family between each schedule.

Q. Commissioner, are you able to answer the question?

Mr. Chesebro: I doubt he understands it.

Q. Commissioner, do you understand the question? A. I have heard your question.

Q. Do you understand it? I will try to (35) rephrase it. A. It is clear enough. The only answer I can give you is for simplicity of computation, to regularize the interval

between sizes of familes. For example, if you compared the previous schedule with the one now in effect, you will see variations that are not regular between different sizes of families. In an effort to simplify the single standard of assistance to be used in any particular geographical area of the state, we attempted to regularize, to the extent that we were able, these variations.

Q. So that the constant increase in differentials between 1, 2, 3 and 4—2, 3 and 4—I withdraw 1—is based on the desire to maintain a constant between the size of familes? A. An easily understood variable.

Q. It does not reflect the differences in cost of utilities between two-person and three-person families? A. Solely.

Q. New York City and the counties on SA-2 were found in May 1968 to have identical utility costs, relatively identical? A. Yes.

(36) Q. That's why they were grouped together? A. Right.

Q. Why is there now a 7 to 10 per cent differential between families in New York City and families in the counties formerly on SA-1? A. The essential difference is in the complexities of urban living in the City of New York, the necessity for provision of transportation items on a regular basis, the fact that there are cultural opportunities, readily available transportation, community center facilities, and clinic facilities in New York City that are not available in other areas of the state to the same extent, certainly not the components of the urban living requirements.

Q. Is it your testimony that the facilities of both cultural and social are more available for usage by people in New York City than in the surrounding counties? A. Yes.

Q. And you specified those facilities to be—let us be specific—museums? A. Yes.

Q. Would you specify the others again for me, please?

I don't have a list. (37) A. Clinic services, community center activities, religious opportunities, cultural in a general sense. All of these things contributing to life in New York City.

Q. And the additional grant of approximately $4, it was your testimony, although it is a bit more, is to cover the transportation to these facilities? A. Yes.

Q. As well as the expenses of them? A. Not necessarily. Some are free and some are charged.

Q. But it is to cover the use of them, put it that way? A. Yes.

Q. You mentioned clinics. Do you mean hospital clinics? A. It could include them. However, there are provisions in the medical assistance program to cover transportation on a regular basis for people who need medical clinic service.

Q. In establishing these differentials, did you make a study of the relative availability and usage of museums, clinics, community centers, religious centers, cultural institutions in New York (38) City, in Westchester County, in Nassau County and so on? A. No.

Q. Were there special grants available before for these items? A. In New York City?

Q. Correct. A. I don't believe so.

Q. In terms of the component budgetary studies leading up to the figures you promulgated in May, 1968, did you budget the figures for these items? A. No.

Q. So they were only to the extent the recipient could utilize a budget for other items to cover these items? A. That is correct.

Q. Did the legislature inform you in any manner that it was adding these items onto the New York City budget? A. No.

Q. Are you authorized to raise the surrounding counties outside New York City up to the New York City level? A. Yes.

(39) Q. And although all items of budgeted need in May 1968 cost the same, you did not, because of these additional items provided in 131-a for New York City, is that correct? A. I am not sure I understand.

Q. You exercised your discretionary power to increase grants for all the counties in the state recently and that power went as far as increasing grants up to the New York City maximum; you did not exercise that power for the former SA-1 counties up to that maximum at all? A. That's right.

Q. The reason you did not was because you deemed the group of facilities we talked about properly budgeted for New York City but not for surrounding counties? A. That is correct.

Q. You testified before the special grants for furniture and clothing were done away with, is that correct? A. Yes.

Q. And cyclical was done away with but replaced by about 50 per cent of its former amount albeit for different items? I speak now of the $4.25 (40) urban living cost given to New York City recipients only. A. I don't—

Q. The amount you referred to before was $4. It was given to the New York City people and not people outside New York City? A. That is correct.

Q. And that amount represents approximately the difference between— A. I had made that calculation.

Q. But it does, doesn't it? A. Yes, I guess it does.

Q. People in New York City could use that amount for items of clothing and furniture that they used to use a cyclical for, could they not? A. As a matter of fact, we have no limitation on what they use their money for. Any recipient of public assistance in New York State may use his grant in any way he sees fit as long as he does not misuse the money or mistreat his children.

Q. And by not using these facilities and using it all on furniture and clothing would not be a misuse? A. No.

(41) Q. It was assumed before 131-a and your regulations that the regular grant did wholly provide for items of clothing and furniture? A. Replacement of clothing and replacement of minor items of kitchen items, but not major pieces of furniture, not tables, desks or anything like that.

Q. It did not? A. No. These were special need items.

Q. Did it provide for special items of clothing? A. Yes.

Q. It was assumed it did? A. Yes.

Q. Why were you spending $100 per person on items of clothing and furniture? A. Major items. I said replacement items as against initial purchase. This makes a little distinction. In other words one having an overcoat it is presumed to have a life of so many years, and at the end of that time, an allowance having been granted, you can replace it. But if you don't have an overcoat and need it initially, then a special grant had to be made to clothe the person with the overcoat.

(42) Q. And what if the overcoat wore out three months after you went on welfare; a special grant would be necessary, would it not? A. It is a good deal like a person, I suppose, who has a fire and it's necessary to replace the item. If he uses his overcoat or it wears out, it is replaced.

Q. The criterion under your regulations for special grants for clothing was a demonstration of need for a major item of clothing, was it not? A. Yes.

Q. And not a demonstration of initial need but a demonstration of being without today, is that correct? A. In large measure, yes.

Q. And people used these grants in New York City and in the counties surrounding New York City, people applied for and obtained special grants? A. Oh, yes.

Q. Isn't it then likely that the present budget for New York City people, that part of it which represents the cyclical, may well be used for these items? A. There is no part of this represented in (43) the cyclical.

Q. The part in addition to the former SA-1 in New York City, which by definition, did not cover major items of furniture or clothing but was covered by a cyclical, the $4 or $4.25 added to SA-1 might be used for the need that was previously recognized as a cyclical? A. It can be used by the recipient in any fashion he sees fit.

Q. And recipients, though, in Nassau and Westchester have about the same need for furniture and clothing, do they not? A. I would assume so.

Q. And they don't have that amount available to do that? A. That's right.

Q. And is there any written evidence that the $4 urban living cost in New York City was meant to provide the items you listed before? Are there any—

Mr. Hoffman: Which items do you mean?

Mr. Albert: Museums, community centers, clinics, cultural facilities, religious facilities.

A. I answered before, saying no study had (34) been made for this.

Q. Is there any evidence this was the purpose of it? Had recipients been told, "You now have an urban living cost that is meant to cover these items for you"? A. No.

Q. "And we encourage you to utilize it that way"? A. No.

Q. Did you have communications with the Department of Health, Education and Welfare over differentiations within New York State? A. Oh, yes.

Q. Did you specify to the Department of Health, Education and Welfare that this amount added onto the New York City grant was for these items? A. Yes, we have submitted our plan material with that as the justification for it.

Q. How is it spelled out in those plan materials? Are you familiar with the plan materials? A. I have testified

along the lines of the bases upon which our submittal was made. We have not received approval of the plan material or disapproval.

Q. And when were those plan materials submitted (45) approximately? A. In June.

Q. There was an additional submission after March 31st before June, was there not? A. If you mean formal submission of plan material as contrasted with a submission of the Chapter and law, those are two different things. We did not submit formal plan material implementing the original legislation. We did after it was amended.

Q. That was covered by your letter of June 2nd? A. Yes. I believe that was the date. Do you have a copy of it?

Q. Yes. I apologize for its slight illegibility (handing). A. Yes, this is it.

Q. Can you read the paragraph underscored referring to the reason for the differentiation? A. "The initial point"—

Q. I'm sorry. Just read it to yourself. I don't mean for the record.

(Pause.)

Q. And in it you state that New York City, "being unique in size and complexity, results in special (46) requirements for transportation to use available services," is that correct? A. Yes. That's what I told you earlier.

Q. I am leading up to the next question. I am trying not to be repetitive, really.

The first item you mention as illustrative is a need to visit welfare centers. Are you familiar with the geographical districts of welfare centers in Nassau County? A. No, I am not.

Q. Are you familiar with the geographical districts and concentration of poor people in Nassau County? A. No.

Q. Then you are not aware of the distance they must travel to visit their welfare centers? A. No.

Deposition of George K. Wyman, Taken by the Plaintiffs.

Q. Are you aware of the transportation system in Nassau County? A. No.

Q. Are you aware that there are at least 17 separate franchised bus lines without interchange between them? A. No.

(47) Q. Are you aware that the minimum fee is a minimum of 25 cents?

Mr. Hoffman: I object. These are leading questions.

Q. Do recipients, to your knowledge, have a need for transportation to their welfare centers in Nassau County? A. I should imagine so, on occasion.

Q. Approximately the same as recipients in New York City? A. I don't know.

Q. No reason to believe otherwise? A. No reason to believe otherwise.

Q. Are you aware of recreational—the second illustration in this letter is recreational centers for the aged. Are you aware of recreational centers for the aged in Nassau County? A. No.

Q. Are there any, to your knowledge? A. I don't know of any.

Q. But you don't know that there are not? A. No.

Q. The same is true for Westchester County? A. Right.

(48) Q. There are more in New York City? A. Yes.

Q. Are you aware of day care centers for children in Nassau County? A. Yes.

Q. There are? A. There are some.

Q. And there are day care centers for children in Westchester County? A. Yes.

Q. And for those people who need to use them there are transportation costs involved? A. Yes.

Q. To the extent that their transportation systems cost more than New York City, the cost is more? A. That is correct.

Q. Are you aware of cultural recreational facilities in Nassau County and Westchester County? A. No.

Q. You think there are none? A. I just don't know of any.

Q. To the extent there are, people would use them as in New York City? (49) A. That's right.

Q. And transportation costs would be involved to get there? A. Yes.

Q. Another illustration used here are beaches. You are aware of beaches in New York City? A. Yes.

Q. And you are aware of transportation to get to them? A. Yes.

Q. And one could get to those beaches for one subway ride? A. Yes.

Q. That is 20 cents and for aged ten cents? A. Yes.

Q. Their are beaches in Nassau County? A. Yes, I am sure there are.

Q. And there is no subway system to make it quite so convenient, is there? A. No.

Q. The same would be true of parks? A. I would assume so.

Q. So these are items of budgeted need for people in New York City that are not items of budgeted (50) need for people in Nassau County and Westchester County? A. That is correct.

Q. So there is a difference— A. Budgeted in the sense of explaining the differential.

Q. Reflecting itself in the amount of money being given to people and the calculation of the grant? A. Right.

Q. So that were one of these counties, say Nassau, to show you tomorrow the distribution of museums, beaches, parks, day care centers and recreational centers in Nassau County, show you the transportation costs involved in getting there, that would not change the level of Nassau County's grants? A. Nassau County has made a request.

for an increase in the standard of assistance. This has been submitted with the approval of the Board of Supervisors of Nassau County and is undef consideration by our department at this time.

Q. Is there a showing in that request of various items explaining the differential in New York City? A. I haven't familiarized—

(51) Q. Is there a showing of the need for transportation to welfare centers, recreation centers for the aged, day care centers and so on? A. I couldn't answer your question. I don't know the specifics on which their request is based.

Q. Would a showing that food costs the same in Nassau County and Westchester County as New York City, clothing cost the same, furniture cost the same, utilities cost the same be sufficient to require increasing Nassau and Westchester to New York City?

Mr. Hoffman: I object to that question. It is hypothetical and speculative.

Mr. Albert: It is not speculative. The Commissioner is authorized to make that decision. I am asking if that kind of showing is what is expected.

Q. Would the fulfillment of those elements by phantom county, to avoid coming to a decision surrounding New York City or, indeed, upstate, require you to exercise your power to match the New York City standard? I left out special transportation needs on purpose. A. The phantom county would have to show that based upon the May 1968 prices that errors were made in the judgments then applied to those facts to warrant a (52) differential.

Q. Phantom County is one of those which in the May, 1968 pricing was grouped with New York City and is only showing what you found then, that clothing, furniture, utilities, food were the same. That showing today, then, would

not lead you to increase that to New York City; it is a fact you know from the May 1968 pricing? A. That is why we are reviewing the documentation submitted by, in this case, Phantom County, to determine the validity of the request.

Q. I understand that, but if a county merely shows that your 1968 figures were correct, merely shows what you know from the 1968 studies, I should think it would not require you to alter the existing regulations you promulgated just a month ago because, as you said, that is the basis for those schedules. Now, you haven't misread those. The facts are clear. You have explained the difference between New York City and others is not—surrounding New York City is not utilities, furniture and what not. We agree they are the same, do we not? A. Yes.

Q. If someone were to show you they are the (53) same, it would seem to me we are not advancing the inquiry at all, would it; you know they are the same. I am asking you, then—

Mr. Hoffman: I object to this line of questioning. You are giving him a whole series of leading questions here and you are always making assertions.

Mr. Albert: I don't think these questions are inadmissible. I hope I am not badgering him. I am not. I am merely trying to pinpoint what is the showing necessary to satisfy this legislation and your explanations of the differential between New York City and the others.

Q. Presumably that is to show a special need for transportation to the specific places you had enumerated. A. Well, I would be happy to answer your question except for the fact that I am in the midst of an administrative determination of this very question. So that until I have had an opportunity to familiarize myself with the evidence pre-

sented by Nassau County, I hesitate to answer your question. I would like to be as responsive as possible, but I don't think I can under the circumstances.

Q. In the drafting and enactment of the (54) legislation, did you have discussions, or your department, with the New York State Legislature? A. Yes.

Q. Did you request that amendment or your department? A. Request the amendment to authorize—

Q. Authorize you to increase or lower grants, the amendment of May 12th? A. I was not present at the time and I am not in a position to state.

Q. What was said? A. What was said?

Q. You understand your department had some discussions with the legislature? A. Yes.

Q. Who were the persons—who was in charge of the department at the time? A. The First Deputy Commissioner, George Chesebro.

Q. Do you know of any understanding between your department and the legislature or the legislative leaders regarding the implementation of the amendment?

Mr. Hoffman: I object to that. It calls for a hearsay answer, first of all.

(55) Mr. Albert: It is the administrator of the department.

Mr. Hoffman: You might ask Mr. Wyman if he had any understanding with any particular legislative leader but that is a very vague question.

Q. If the witness feels it is too vague to answer, say so. A. Yes, I do.

Q. Do you know of any understanding reached between your department and any legislator on the implementation—any legislative leader on the implementation of this statute, this amount? A. No, I do not know any of my own knowledge.

Q. Do you know as a result of your knowledge as a Commissioner of the State Department of Social Services? A. That is what I said, I don't know of any.

Q. Have you issued any regulations or interpretations or bulletins to local social service districts interpreting the key language of the amendment, a showing that the total cost of the items required to be provided actually is more than the schedule of monthly grants and allowances established by the statute? Did you issue any interpretation of that to (56) anyone? A. Not in detail, no.

Q. In summary form? A. Nothing more than the statute.

Q. You just repeated that language? A. As far as I know, that's all we have done.

Q. You have given no guidance to local social services officials beyond the statute language as to what kind of a showing they ought to prepare if they wish to raise or increase grants? A. That is correct.

Q. And the only one from whom you received a request for an increase is Nassau County? A. That is correct.

Q. You received no request from Westchester County? A. No.

Q. Suffolk County? A. No.

Mr. Albert: That's all.

Examination by Mr. Hoffman:

Q. Commissioner, what information did you use to arrive at the differential in utility costs? A. The study made in May of 1968.

(57) Q. What information did those studies have reference to? In other words, how was the differential in utility costs established by these studies? A. By determining the amount of BTU's, for example, required to heat a given space, a house of three rooms required so many BTU's to heat, and then this equivalent in fuel was priced

out to determine what that is or whether it was lights, light the building, whatever it was. The component was the basis and the variation is in the cost of obtaining those items.

Q. And you made reference to the official tariffed utility companies when you priced this out? A. Yes.

Q. And those differences in utility costs are reflected in the former schedules, SA-1, SA-2 and SA-3? Would those account for the differences or part of the differences in the amount of public assistance allotted to families depending on the geographic area in which they lived? A. Part of the allowance, yes; part of the difference. Excuse me.

Q. And that differential in utility cost is now presently carried over into the present scheme, (58) that is, the regulations which you have now promulgated pursuant to the new statute does reflect these differences in utility costs between various counties in the state? A. That is correct.

Q. Does your department periodically check on food prices and clothing prices? A. Annually.

Q. Annually. And what are the sources of your information? A. The basic requirements as developed by the U. S. Department of Agriculture forms the basis for the food and requirements and other items that go into the budget. These are then priced, as I explained earlier, or testified earlier, in stores.

Q. In other words, is there independent verification of these prices by members of your department? A. Yes.

Q. And that information is taken into consideration by your department when you do your annual pricing? A. That is correct.

Q. Now, under the former system, who was it that determined the specific items of need that (59) would be the subject of special grants? In other words, who made the first determination that certain items could be obtained through special grants? A. This was determined by the

State Board of Social Welfare in the promulgation of its results.

Q. And who actually provides these items of special needs? A. The local social services district.

Q. Are these provided to all welfare recipients or must they demonstrate some need for these items? A. They must demonstrate a need for them.

Q. Must they also request these items? A. Yes, they must request them.

Q. The newly promulgated schedule for counties outside of New York City contains maximum rates that are exclusive of rent and fuel, is that correct? A. Yes.

Q. And those maximum rates are also exclusive of day care and day care centers, is that correct? A. Yes.

Q. And homemaker services? A. Right.

(60) Q. And camp fees? A. Right.

Q. And household moving expenses? A. Correct.

Q. And security deposits? A. Right.

Q. And extermination fees? A. Right.

Q. And finders fees? A. Right.

Q. And life insurance premiums? A. Right.

Q. So that all of these items that I have just enumerated are not included in the scheduled maximum grant? A. That is correct, they are not.

Q. And is it possible that a resident who is living outside of New York City and whose rent exceeds the rent of the resident in New York City could conceivably receive a totally larger allocation of public assistance during a given month? A. Yes, he could.

Q. And isn't it possible that if all of these items that I just enumerated, purchase of (61) service items, rent and fuel, were taken into consideration that the average total expenditure per welfare recipient might often be greater or in some cases be greater outside of New York City than inside of New York City A. It is possible.

Q. Commissioner, what is the purpose of the flat grant provision in the statute? Why was that enacted by the legislature, if you know? A. It was done for two reasons: one, because there was a considerable feeling that to leave the promulgation of these standards solely to the administrator placed too great a responsibility, too much authority in a single person, and that because of the numbers of people affected and the dollars involved, that the elected public representatives should be the persons who actually established standards very much in the same way that the legislature establishes aid formulas in the education program. Then they assume full responsibility for what takes place.

Now, the other and equally important facet was to simplify and make more understandable the very cumbersome and difficult system previously in effect and to remove as much as possible the whim of (62) either the grantor of the special need item or the knowledge or intelligence of the individual who went to request the item. In other words, a simplified annual or monthly amount that could be easily understood by the taxpayers, the legislators and the recipients of assistance.

Q. So that the purpose of the flat grant provision in the statute and the purpose of the flat grants promulgated by your office are essentially a beneficial purpose, it was intended to improve the system.

Mr. Albert: That I really think is rather somewhat irrelevant, the Commissioner's opinion on beneficence or not.

Q. Did the Federal Government issue any material to the State urging the adoption of a flat grant system? A. Yes. And I might say that the authorities in the field have been urging this for many years.

Q. Now, when you promulgated a schedule for Nassau

County and for the surrounding counties, of course the maximum was already established by the statute for New York City? A. Correct.

(63) Q. You testified before that you took into account the difference in living style between New York City and the surrounding counties. A. That's right.

Q. And that this accounted for some of the differentials in the schedules, in Schedule SA-2, I believe—

Mr. Albert: I fear that is a misstatement in your question.

He stated it accounted for the differential between New York City and the surrounding counties.

Mr. Hoffman: I will rephrase my question.

Q. Is some of the differential between New York City and the surrounding counties accounted for by the difference in living style in New York City? A. Yes.

Q. Does this differential so reflect a difference in utility costs? A. No.

Q. No? A. Not to my knowledge.

Q. In other words, the sole criterion here was the difference in the style of living between (64) residents of New York City and residents of surrounding counties? A. Yes.

Q. Taking former schedule SA-1, under the former schedule, what would a single person receive? A. $66.

Q. And under the present schedule?

Mr. Albert: From where?

Mr. Hoffman: Counties surrounding New York City.

A. $65.

Q. That would be a difference of $1? A. That is correct.

Q. Is that exclusive of fuel and rent? A. As paid, yes.

Q. And items that would be covered by purchase of services? A. Right.

Q. Taking a family of two persons, what is the minimum limit for a family of two persons under the old schedule? A. $94.

Q. And what is the maximum limit? A. $118, depending in that case on the age of

(65) Q. That's right.

Now taking a median figure between $94 and $118—

Mr. Albert: You are asking him to work out—this is not testimony.

Mr. Hoffman: I am trying to simplify this.

Mr. Albert: You can leave that for your brief, though.

Q. Commissioner, in your opinion, is the need for recreational facilities greater for residents of New York City? A. I think it can be justified on the basis of the complexities of life in the largest urban center in the country, not only accessibility of it but the necessity for it in the light of the pressures and the hazards of life in this metropolis.

Q. And when you promulgated your schedule for the counties outside of New York City, you were taking into account transportation costs, is that correct? A. Not to the same extent, no.

Q. But were those costs taken into account? A. If it is solely transportation, no.

(66) Q. But when you made your total determination in terms of those counties, in other words, what the maximum of grant would be in the counties outside of New York City was one of your considerations in arriving at that maximum figure transportation cost? A. Yes.

Q. And in your opinion, do you believe that the transportation cost of residents outside of New York City

would not be as great as the transportation cost of transportation inside New York City? A. I can't say that because it is my understanding that transportation costs per ride in New York City are actually less than the same ride or distance in upstate New York.

Q. Is the transportation consideration governed only by the costs of transportation or does availability of facilities enter into it? A. Availability.

Q. Would you be able to elaborate on that further? A. I can give you an example. In some of the upstate counties there is absolutely no public transportation and no way in which people can move by bus from one part of the county to another. They must (67) rely on friends or relatives or their own means to get to whatever destination they wish to reach.

Q. When you promulgated the schedule for the suburban counties, did you also take into account the need for cultural and visiting cultural facilities in those counties? A. No, not to the same extent.

Q. Not to the same extent? A. No, because, as I said earlier, the hazards and the pressures of life in this city, it seems to me, are recognized as requiring this.

Q. So, in other words, those hazards and those pressures would account for the difference in maximum level between the persons surrounding New York City and persons within New York City? A. Yes.

Q. Do you intend to issue guidelines on the operation of the statute? A. We have issued substantial instructions and guidelines with respect to this subject.

Mr. Albert: Which statute?

Mr. Hoffman: I meant to specify.

Q. Do you intend to issue guidelines on the newly enacted amendment to the statute, I believe it (68) is subdivision 4.

Mr. Albert: Referring to increase and decrease of grant levels, I assume?

Mr. Hoffman: Yes, that is what I meant.

A. I wouldn't see any necessity for it.

Q. And pursuant to subdivision 4 of the statute, any social service district can apply to you for an increase? A. That is correct.

Q. What do you estimate as the amount of time that it would take your department to decide the application? A. This is difficult to say in every instance. I would think within a month of the time the request would be submitted.

Q. And is it true that you have an obligation to report to the State legislature? A. On recommendations for changes in the statute, is that your question?

Q. I didn't want to lead you, but, yes, that was my question. A. Yes, the law does require the State Board and Department to recommend revised standards annually.

Q. Would it also be possible on the basis of (69) this annual gathering of information which you are required to do, would it be possible for you unilaterally to upgrade standards if you felt that the cost of items was not being met by the present schedules? A. To the maximum stated in the statute, yes.

Q. So that you could unilaterally bring the other counties up to the maximum level in New York City on the basis of your own independent fact-finding? A. Correct.

Mr. Hoffman: That is all.

Mr. Albert: I will be very brief on redirect.

Examination by Mr. Albert:

Q. The special grants that were listed before for personal services, they are equally available to persons throughout the state? A. Yes.

Q. The power to grant is equal rent? A. Yes.

Q. Rent money only covers rent, one could not go to a museum on rent money unless one did not pay rent, is that correct? A. That is correct.

(70) Q. Indeed, one could not get a money grant for any of the special items, could one? A. They are purchased on their behalf, correct.

Q. So they must use the service, not the money grant as one could use the money grant generally for other purposes? A. That's right.

Q. So that if you assume with me that we were giving people different money grants in Nassau County, New York, that could not be offset by this uniform purchase of service method or rent?

Mr. Hoffman: What do you mean offset?

Q. If we were giving people $10 for food in New York City and $2 in Nassau County, this would not close that differential, would it? A. No, fortunately we are not giving those amounts.

Q. I said if you could assume with me. This is irrelevant to that differential and not close it a penny. A. You are correct.

Q. On the flat grant provision mentioned in the statute, are you familiar with the report called (71) Challenge and Response? A. Yes.

Q. Was that prepared by you or under your auspices? A. No. I had a hand in aiding in the development of it.

Q. And does your name appear on it? A. No, I think it is under the aegis of the State Board of Social Welfare.

Q. And are you in concurrence with its recommendations and statements? A. Yes, I am.

Q. Does it talk about a flat grant system? A. Yes, it does.

Q. Does that flat grant system resemble the flat grant provision in 131-a? A. Yes.

Q. Does it talk about simplifying age differentiated schedules? A. Yes, I believe it does.

Q. Does it describe the method for doing that? A. No. It talks in general terms.

Q. Does it talk about abolishing the cyclical (72) in New York City? A. No.

Q. Is that a flat grant, the cyclical grant? A. No.

Q. Why not? A. Because there were other variations in the grant for other items of special need.

Q. In itself, representing $100 per person for clothing and furniture, is that flat regarding clothing and furniture? A. Yes.

Q. No flat grant system had to abolish that to be a flat grant system, did it? A. No.

Q. The Federal Government's urging of the flat grant system was by what official? A. It was undertaken at a time when John Gardner was the Secretary of the Department of Health, Education and Welfare. Actually it was suggested and recommended when Ellen Winston was the Commissioner of Welfare.

Q. Does this appear in a regulation of the Department of Health, Education and Welfare? A. No.

(73) Q. Does anything recommending a flat grant system appear in the regulations of the HEW? A. Not to my knowledge. Q. In the handling of public assistance, all four thousand pages? A. Yes.

Q. Could you specify where that might appear? A. No, I can't.

Q. Does the provision of purchase of services, is that a flat grant? A. No.

Q. To get homemaker service, must one demonstrate need? A. Yes.

Q. To the same officials one demonstrated need before? A. Yes.

Q. Same discretionary judgment involved? A. Yes.

Q. Cab fees? A. Yes.

Q. Moving expenses? A. Yes.

Q. Security deposits? (74) A. Right.

Q. Burnouts? A. Right.

Q. That was added by you after the enactment of 131-a regulations? A. Yes, it was.

Q. Was it cumbersome and difficult as you characterized special grants before? A. I don't think so. We haven't had enough experience to answer your question specifically.

Q. As to those items they are no less cumbersome or more difficult? A. It should be less. Because the purchase will be from a provider, not of just a homemaker service for one individual but perhaps for an entire case load and the arrangements for paying for it will be in a lump sum or a substantial amount and, additionally, the advantage of it is that the people will actually receive the benefit and not be perhaps using the money given for homemaker service for some other extraneous act.

Q. Does the flat grant system necessarily entail either a reduction in the grant or an overall savings in welfare expenditures? (75) A. No.

Q. Indeed, could it not, if you arranged out all special grants, entail quite an increase? A. Oh, certainly, depending on where you set the amount.

Q. And isn't a condition of an enlightened flat grant system that you provide the regular grant for those items that previously were provided as special grants?

Mr. Hoffman: I object to the word "enlightened".

Q. Does enlightened pin—strike it.

In your opinion, Commissioner Wyman, is the flat grant system desirable for the reasons you stated before regardless of what it does with the special grants? A. I think so in large measure, yes.

Q. And would not the flattest grant be one which budgeted for just the simple items of universal need, say food and not for rent, because rent is a matter of individualized need upon demonstration? A. I think one of the biggest problems in setting a flat grant is to make certain that it is adequate. I think you can support the concept of the (76) flat grant if it is adequate. If it is inadequate, then, obviously, it is not as satisfactory a means of providing help for poor people.

Q. Isn't it a fact that rent and fuel now partakes more of the characteristics of a special grant than it does of the regular recurring or flat grant? A. Right, based on individual needs and requirements.

Q. Yes, and verification of same.

And there is quite a bit of department discretion involved in administering that? I refer to the levels of approval for different grants. A. This is dependent upon local policy.

Q. As to the difference in living style between persons in New York City and surrounding counties, was there a study made by your department of said differences? A. No.

Q. Are the pressures and anxiety and hazards that you referred to those you assume from it being an urban complex, is that correct? A. Yes.

Q. And the actual usage of facilities by (77) people under these pressures in New York City is not known to you, is it? A. No. Personally, no.

Q. By your department, the extent to which welfare recipients use the facilities available in New York City? A. Not that I know of.

Q. And comparatively with other counties, other recipients? A. No.

Q. Do you have any reference to the Bureau of Labor Department statistics on cost of living? A. Yes.

Q. For what purpose? For what purpose do you refer to those cost of living analyses and studies? A. In order to aid us in determining what the standard should be, what the medical assistance eligibility level should be.

Q. What about to aid you on the various components of the grant and their costs? A. Oh, yes.

Q. Are you aware that the Bureau of Labor statistics for the area of New York City includes the (78) surrounding counties as one unit? A. Yes.

Q. Is it correct to say that there never has been an item-by-item comparison, county-by-county in New York City? A. I don't think so.

Q. That really isn't the process that underlay 1, 2 and 3 or the new schedules, for that matter? A. That's correct.

Q. Indeed, would that not be, I should say the least, exceedingly expensive and a very cumbersome way of proceeding? A. I think so.

Q. Hence it is fair to say, isn't it, that the costs of various items such as food are rough estimates of areas and not specific counties? A. And that the differential isn't sufficient to warrant the kind of detail examination your earlier question pointed to.

Q. Correct. A. Right.

Q. That is perhaps why you didn't distinguish cost of food in New York City from the cost of food in the most rural upstate county? (79) A. That's right.

Q. Although there is some cost difference? A. There may well be, but it is insignificant in the overall.

Q. And the same would be true, for example, for cost of utilities in the areas that you grouped together, they may not be identical but if they are corresponding enough— A. Closely enough related.

Q. —that is sufficient.

In any case, you made no recent study of the costs of

utilities to explain the new schedules? A. Not since May of 1968.

Q. At which time you found the grouping in SA-1? A. Yes.

Q. Are you in the process now of, given the difficulty we discussed, of an item-by-item comparison, county-by-county, you are not in the process of doing that now, pursuant to the legislative amendment? A. No.

Q. And you don't contemplate that to be your job under this amendment, do you? A. No.

(80) Q. In fact, you contemplate your job under this amendment to be very similar to what it was in May 1968? A. Right. Unless some substantial variation appears when we do another pricing.

Q. When are you doing the next pricing? A. We would hope to do this in October, 1969 in order to meet our obligations under the statute to recommend whatever those changes warrant to the coming legislature in January 1970.

Q. The statute requests you to recommend cost of living data, does it not? A. Not that specifically. I have forgotten the exact wording but the essence is update.

Q. And to provide the legislature with information that is pertinent to their task? A. Right.

Q. With which they may do as they wish? A. That is right.

Q. They do not meet until 1970, is that correct? A. Early January 1970.

Q. And it was your practice to promulgate any schedules based on a study done in May sometime (81) during July or August following that May? A. That is correct.

Q. And then you afforded local departments about eight months to implement those schedules? A. Yes.

Q. What was the reason for such a long period? A. It had been shortened, as a matter of fact, from the previous

time limitations. If we were able to issue our rules, call it, for an arrangement, whereby if we could issue the new studies prior to the first of August, all districts would have to have them in effect by the first of January based on the May pricing, which meant, really, a nine-month period from the date of pricing to the date of actual implementation. However, if we failed to issue the regulations by the first of August, then they had as much as eight months beyond that. Now with what we are planning to do, there will still be a period October to July—we are assuming the legislature will put the new standards into effect the following July, a nine-month period, equivalent to the nine months period May to January in the past.

Q. Part of the reason for such substantial time is that it does take time to rebudget the caseload? (82) A. And to compile the data and to issue the instructions and to rebudget the caseload, plus accumulating sufficient funds at the local level to meet the increase, which has been the normal pattern over the past few years. In other words, to budget for it in the local government's annual budget.

Q. So when you say you could perhaps decide an application under the amendment for an increase within, say, a month, you don't mean by that, that upon your favorable decision, shall we say, in the next week we will have the new grant with the new schedules? A. That would depend upon the facility and rapidity with which the local department put the new schedules into effect.

Q. And those departments in the past have never exhibited that kind of facility? A. Not to my knowledge.

Q. In fact, it is impossible, isn't it? A. I think it would be extremely difficult.

Q. Final question. Referring to your testimony about the difference between New York City and Nassau and Westchester, is the need to make greater use of and therefore finance the cost of making (83) greater use of the

facilities you just listed? If differences are not based on any findings that these facilities or any facilities of the sort you mentioned are not available in Nassau or Westchester, are they? A. No.

Q. Or that it doesn't cost as much to make use of them if not more, no finding to that effect? A. No.

Q. You finance the making use of them in New York City to a greater extent? A. That is correct.

Mr. Albert: That's all.

Mr. Hoffman: Two or three questions.

By Mr. Hoffman:

Q. Was the flat grant project in New York City prior to the enactment of the U. S., was that approved by HEW? A. Yes, the Department of Health, Education and Welfare.

Q. And that was a cyclical grant? A. Yes, quarterly payments.

Q. Is that what cyclical means, quarterly payments? A. Yes, repeated in cycles for quarterly (84) payments of $25 per payment per person.

Q. And that was in lieu of special grants? A. Yes.

Q. And that was— A. In lieu of special grants for.

Q. Was that a permanent project? A. No.

Q. What kind of project was it? A. Well, the—I don't recall the time limit on it but the normal period was one year with reports as to progress and development for further periods. This may have been for a longer time. I am not absolutely certain.

(Discussion off the record.)

Q. The Bureau of Labor Statistics you were speaking about before, do they cover all items of need? A. They cover all items including medical care which is the item, incidentally, that has gone up most rapidly in cost of all components in the price index.

Deposition of George K. Wynne, Taken by the Plaintiffs.

Q. Do these statistics cover recreational and cultural items? A. I believe they do, yes.

Q. Would those statistics which group the New York area, which consider the New York area as one, would those statistics reflect the difference in life style between a person living in New York City and a person living in the surrounding areas? A. I don't know.

Q. Would you say that the amount of transportation cost allocated to the individual person, would that take into account the number of facilities available to a person in a given area? A. Oh, yes.

Q. Are you aware of the establishment of food stores in Nassau County for the benefit of persons? A. Yes.

Q. Do you know offhand how many food stores have been opened in Nassau County? A. I understand 30 or more. You are thinking now or you are stating now the food distribution points for surplus food distribution, are you not?

Q. Yes, that is what I mean; are these stores located on a county wide basis? A. It is my understanding they are.

Q. In different parts of the county? A. Yes.

Q. Rather than all at one small area? A. Yes. We hope more local districts will do the same as Nassau has done.

Q. Do you know the purpose of establishing all of these county wide food stores in Nassau County? A. Yes, it is to encourage a greater use of food supplement program and to make it more convenient for people to get the foods.

Mr. Hoffman: That's all.

By Mr. Alker:

Q. Do you know the percentage of recipients now participating in commodity distribution in Nassau County? A. No, but state wide it is less than half of the people, almost eligible are benefiting.

Deposition of George K. Wyman, Taken by the Plaintiffs.

Q. There is such a program in New York City today, is there not? A. Yes, there is.

Q. Which you can reach by subway, the distribution centers? A. I am sure they can be.

Q. Have you received a response from the Department of Health, Education, and Welfare to your (87) letter of June 2nd? A. Not yet.

Q. They deal with family budgets, they rather assume a common level of need of certain basic items of people, do they not? A. I believe so.

Q. And they don't therefore, take into account people who like more or desire more? They deal with low-income budget? It rather deals with the basics of life, does it not? A. Yes, I believe that's right.

Q. Until now, the New York State Welfare budgets have pretty much confined themselves to the basics of life, too, haven't they? A. Yes.

Q. And there hasn't been certainly very much conscious or articulate inclusion of such items as beaches, parks, museums and the like? A. No, although recreation is recognized as a growing need.

Q. Was there an amount budgeted for it before March 1962, an actual amount in the regular grant that you said, your department said, this per week for recreation per child or adult? (88) A. I don't believe there was. I am not sure.

Q. So the first time we receive inclusion of this item is with the simplifications worked by 131 a? A. Yes.

Q. Are you familiar with the monthly average grants to all recipients—I don't mean the exact amount, but do you keep monthly averages in various counties? A. Yes, and we publish them.

Q. And you publish them. Is it a fact the averages in Nassau and Westchester are certainly no less than the average in New York City? A. I think depending upon

a six-month average versus a monthly average, this can vary from month to month, but so far as I know, the averages in New York are higher than they are in the surrounding area.

Q. What if we exclude the aid to dependent children program and ask only about aid to the aged, blind and disabled? A. I assume that the statistical reporting is available to you. I don't happen to have it and I can't answer your question.

Mr. Hoffman: Off the record.

(Discussion off the record.)

(89) Q. Let me show you a chart which is labelled New York Public Assistance Expenditure Per Recipient by County, October, 1968.

I direct your attention to the figures in that chart. A. Yes.

Q. Overall they would seem to indicate the highest average per person grant in October, 1968, in all the programs, was Nassau County, Westchester coming a close second, New York somewhat a poor third or fourth. A. Yes.

Mr. Hoffman: I object to the characterization.

Q. How are you going to explain that? A. It is difficult to do for a single month. These averages will vary from time to time. It might serve your purpose better to take a six-month average or even an annual average because you have to remember that special need items were included previously on that.

Q. To your knowledge, if one took a six-month average or an annual average and compared all programs, Nassau County, Westchester and New York City, (90) would there be significant variations? A. I don't believe so.

Mr. Albert: I have no further questions.

(Witness excused.)

Mr. Albert: It is hereby stipulated and agreed between Lee A. Albert, counsel for plaintiffs and Hillel Hoffman, Assistant Attorney General, counsel for the defendant Wyman, that were Deputy Commissioner George Chesebro, Deputy Commissioner of the New York State Department of Social Services to have testified here today under oath, his testimony would conform in substance to the testimony of Commissioner George K. Wyman, Commissioner, New York State Department of Social Services.

Mr. Hoffman: Agreed.

(Time noted: 3:30 p.m.)

(911)

Certificate.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

I, GEORGE WOLF, a Certified Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That GEORGE K. WYMAN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further testify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 16th day of July 1969.

GEORGE WOLF,
George Wolf

0

Defendants' Notice of Motion for Summary Judgment.

Sirs:

PLEASE TAKE NOTICE that upon the annexed affidavit of VERNON MURRAY, duly sworn to the 16th day of July, 1969 and upon the pleadings herein, the exhibits annexed thereto and all the proceedings heretofore had herein, the undersigned will move a statutory three-Judge Court impanelled to hear the instant case on July 17, 1969 at 10:30 a.m. for an order granting summary judgment in favor of defendants upon all of the grounds set forth in the moving papers herein and for such other and different relief as to the Court may seem just and proper.

Dated: New York, New York, July 16, 1969.

Yours, etc.,

LOUIS J. LEFKOWITZ,
Attorney General of the
State of New York,
Attorney for Defendants.

Affidavit of Vernon Murphy in Support of Defendants' Motion for Summary Judgment.

Vernon Murphy, being duly sworn, deposes and says:

I am a Senior Attorney in the office of George K. Wyman, Commissioner of Social Services of the State of New York and a defendant herein. I make this affidavit in support of defendants' motion for summary judgment in the instant action challenging the validity of Social Services Law § 131-a insofar as it prescribes or allows levels of payment for welfare recipients which vary as between New York City and other parts of the State.

The sole ground asserted by plaintiffs in this action is that the disparity in levels of welfare payment as between New York City and the suburban counties constitutes a denial of equal protection of the laws to welfare recipients in such counties. This is a palpably insufficient claim and the preliminary and permanent injunctions sought by plaintiffs are unwarranted.

Social Services Law § 131 establishes the general criteria for welfare assistance in this state and provides that the test of adequacy of such payments "shall be the sufficiency thereof for maintenance in accordance with standards of public health in the community * * *." Pursuant to this statutory responsibility, the Department of Social Services has determined the adequacy of such assistance in all categories of public assistance through the computation of standards of assistance calculated on the basis of the cost from year to year of the component items which comprise the level of subsistence found to be necessary for a welfare recipient. These items include food sufficient to provide a well-balanced, nutritional diet as well as adequate clothing, household items, laundry and personal incidentals. The level of need arrived at includes an amount sufficient to cover all these items, exclusive of rent

and fuel for heating, which are separate sums added to the monthly payment.

In August, 1968, the Department computed a revised standard of assistance for various parts of the State. The State was divided into three regions and the amounts payable to welfare recipients varied to some extent throughout the State. The region denominated "SA-1" consisted of New York City, Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester counties. One adult received $66 per month in this area. In the two upstate regions ("SA-2" and "SA-3") the figures were $63 and $60 respectively. These amounts are as we have seen, exclusive of rent and fuel for heating which are paid separately.

In 1968, the City of New York established a demonstration project, with the approval of this Department and the United States Department of Health, Education and Welfare, which permitted it to eliminate certain special grants for clothing and household replacements and to substitute therefor a cyclical grant of $100 per person per year. The City Department of Social Services expressly stated that "the nature of the urban crisis and the higher social cost of living in the metropolitan center requires a differential assistance level in these areas." It was this figure which was used as the basis for the current New York City level of $70 for one adult which is embodied in the present levels contained in § 131-a. Under § 131-a, the level outside New York City was fixed at $60 per month for one adult, again excluding rent and fuel. Both these figures also exclude the costs of homemaker services, moving, security deposits on apartments, and other expenses authorized to be directly paid by social services departments on a purchase of services basis, under which the local department will pay outright for these services over and above the grant to the recipient.

Affidavit of Vernon Murphy.

The determination of the Legislature to provide a higher standard for New York City was based in part on the high social cost of living in the urban center referred to by the City Department in its 1968 application. The Department's experience has shown that New York City welfare recipients' actual expenses substantially exceed those of recipients in the remainder of the State. This is due to their higher level of aspiration, greater expectations, the effects of living in a great metropolitan center, and the availability of and need for more recreational facilities than in a suburban or rural environment where children have more space in which to play. New York City life, realistically, in the experience of the Department, includes transportation to beaches, museums, and parks. It includes a higher crime rate which requires safety locks, greater loss of money and material from burglaries, as well as higher laundry and housecleaning expenses due to soot, air pollution and the like.

In fact, the monthly average payments per recipient vary substantially as between New York City and the suburban counties. The average payment on the Aid to Families with Department Children (AFDC) program — by far the largest component of welfare in this State — is $72.28 in New York City and $69.32 in the suburban counties. The variation under the Medical Assistance program is sharper — $123.57 in New York City, $91.55 in the suburban counties. The figures for the remainder of the State are substantially lower than those in the suburban counties. It is to be noted that the levels of welfare in New York State, both prior to the adoption of § 131-a and in that statute, are identical for all programs of welfare — AFDC, Aid to the Blind, Aid to the Disabled, and the like.

Moreover, the Legislature was plainly entitled to consider the sheer number of welfare recipients in New York

City—889,000 out of 1,211,000 in the State (1968 monthly average). The City warrants special consideration and the Legislature was simply recognizing that fact. In New York City per capita welfare expenditures per total population amounted in 1968 to $66.12; the statewide average is $39.12 and Nassau County only $13.83. Not one of the fifty-seven counties outside New York City was above the statewide average figure.

The resultant legislative determination was to establish separate schedules for New York City and for the remainder of the State, in keeping with the traditional legislative distinction between the City and the remainder of the State exemplified by the Multiple Dwelling Law, numerous provisions of the Code of Criminal Procedure, the structure of the courts, and other statutes. It was particularly appropriate where the vast majority of welfare recipients are within the City.

On May 2, 1969, § 131-a was amended by the addition of a new subdivision 4 which provides that the Commissioner of Social Services of the State may establish schedules of monthly grants in individual districts "for greater or lesser amounts" than those established under the law to reflect cost of living "but not to exceed the maximums prescribed" in New York City. The new subdivision also permits local social services officials, with the approval of the local legislative body, to apply to the State Department of Social Services for such a change in schedule.

It was the adoption of this amendment which caused the three-Judge court convened in *Rosado* v. *Wyman* to dissolve itself by order dated May 12, 1969, holding it "apparent that the constitutional issue posed is no longer justiciable. The constitutional attack on the provision as originally adopted has been rendered moot and any attack on the newly adopted subdivision would not be ripe for adjudication by this Court until there has been an opportunity

for action by state officials and until the matter comes before this Court in an appropriate proceeding." The Court explicitly held that the State Commissioner may increase the levels of payment for any county outside the City "either on his own motion or after an application by a local Social Services Officer with the consent of the local legislative body or upon the petition of an aggrieved party, pursuant to Article 78 of the New York Civil Practice Law and Rules."

Pursuant to this section, defendants established new levels of welfare payment for countries outside New York City on June 5, 1969, dividing the State outside the City into three areas parallel to the three areas created in the 1968 administrative determination of welfare payments. Nassau and Westchester Counties were in the highest of these three areas and the amount paid to one adult (exclusive of rent and fuel) in those countries was increased from $60 to $65. Nonetheless, those counties are free to apply for a further increase up to the New York City level and Nassau County has so applied. The three-Judge court in *Rosado* v. *Wyman, supra,* specifically held that a welfare recipient in a county which fails to make such application may proceed under Article 78 in the state courts to compel such an application.

That decision, dissolving the three-Judge court, is presently on appeal to the United States Court of Appeals, Second Circuit, and that appeal has been consolidated with the main appeal in *Rosado* v. *Wyman* taken by defendants from the injunction granted by the United States District Court, Eastern District of New York (WEINSTEIN, J.). These appeals raise the precise questions as to the jurisdiction of the federal courts over the question sought to be raised here, and of the ripeness of this question for adjudication, which plaintiffs raise here.

Affidavit of Vernon Murphy.

The preliminary injunction sought by plaintiffs would, under these circumstances, be most improvident. Aside from the pendency of the appeal in *Rosado,* preservation of the status quo mandates maintenance of the statutory and administratively-determined levels of welfare payment at their present level. To do otherwise would be to ignore the presumption of validity of the statute and, in fact, to presume its invalidity.

Moreover, any payments made by social services departments to plaintiffs or others in excess of present levels under a preliminary injunction would be completely irretrievable were the statute ultimately to be sustained. This would result in a substantial loss of federal, state and county funds which could in no way be recovered. On the contrary, maintenance of welfare payments at present levels would result in no irreparable harm to plaintiffs since any sums ultimately found to be owing them could be disbursed at that time. The loss of federal, state and local moneys which wold result from a preliminary injunction far outweighs any possible harm to plaintiffs from maintenance of the present levels *pendente lite.*

Moreover, plaintiffs' contention that they will receive less as a result of the slight disparity in levels of payment as between New York City and the suburban counties is conjectural at best. Rents are paid over and above the monthly allowances. And rents are, on the average, higher in the suburban counties than in New York City.*

I am informed by Marvin Rachlin, Assistant to the Commissioner of Social Services for Nassau County, that the amount of assistance that has been previously available

---

*Average rent for welfare families of four in New York City as of 1968 was $83.90. In contrast, the lowest maximum rent allowance paid for Nassau county for even one person in one room is $100, and for four persons is $160 in an apartment or $155 in a house.

Affidavit of Leonard Murphy

I am further advised by Mr. Rachlin that plaintiff Miller's case was closed as of June 30, 1969.

I am informed by Mr. Murello of the Westchester County Department of Social Services that plaintiff Batson's allotment grant for July 1, 1969 is as follows:

Basic Maintenance	$ 60.00
Aid to the disabled	12.00
Aid to the blind	8.00
Special diet	11.00
Telephone	6.00
Delivery of food	4.00
Seeing Eye dog	12.00
Rental	8.00
Housekeeper (including meals and transportation)	24.00
Rent	108.00
Total	$ 273.00

Plaintiff Batson's budget after July 1, 1969 will be as follows:

Basic allowance	$ 60.00
Shelter	108.00
Total	$ 168.00

Both the former allowance provided to plaintiff Batson and the present allowance provided to plaintiff Batson are subject to a deduction of $10.80 which she received for social security.

Although plaintiff Batson will suffer a reduction as a result of the reassessment by the Social Services Law, this reduction bears little relationship to the differential be-

tween New York City recipients and recipients in the suburban counties. Were plaintiff Hatson to reside in New York City, her basic allotment would be $6 greater. However, as in the case of plaintiff Bethstein, plaintiff Hatson's rent allotment is approximately $21 greater than the rent allotment for an average family of four persons in New York City. It is therefore likely that plaintiff Hatson's total monthly grant may be greater than the total monthly grant of many New York City recipients similarly situated.

Under these circumstances, plaintiffs fall far short of showing any present entitlement to the preliminary injunction they seek. In fact, the record amply demonstrates the factual basis for the slight difference in welfare payments between New York City and the suburban counties. No material issue of fact exists in this case and summary judgment should be granted defendants dismissing the complaint.

Sworn to by Vernon Murphy, July 15, 1969.

Opinion of Statutory Three-Judge Court

Before Hays, Circuit Judge, and Mansfield and Motley, District Judges.

Mansfield, D.J.

Plaintiffs in this class action are aged, blind and disabled welfare recipients residing in Nassau and Westchester counties, New York. They receive payments under a cooperative federal-New York State assistance program established pursuant to the Social Security Act, 42 U.S.C. §§ 301, *et seq.*, §1381. The program, which must meet certain federal requirements, is financed jointly by the two governments and administered in the State of New York pursuant to its Social Services Law, §§ 131, *et seq.* and regulations promulgated thereunder by its Department of Social Services. Plaintiffs attack a recent amendment of that law, § 131-a, which has resulted in their receiving lower payments than welfare recipients residing in New York City, as violative of the Equal Protection clause of the Fourteenth Amendment and of certain provisions of the Social Security Act as amended, 42 U.S.C. §§ 301, *et seq.*, §§1382(a)(1), 1382(a)(3) and 1382(a)(5). They seek relief in the form of a declaratory judgment to the effect that the amendment is unlawful, and preliminary and permanent injunctions enjoining its enforcement and implementation of the amendment that would reduce public assistance payments received by them below the level available to residents of New York City. Defendants have cross-moved for summary judgment.

For the reasons stated herein, preliminary injunctive relief is granted and defendants' motion for summary judgment is denied.

At all times here involved New York's Social Services Law, § 131, has imposed upon state, county, city and town social services officials the duty to provide adequately

requirements, including rent, fuel for heat, and various non-recurring, emergency or special needs, was made the subject of separate or special grants and allowances, which are not in issue here except to the extent that they constitute a background leading to the New York Legislature's effort, in adopting § 131-a in 1968, to simplify the cumbersome and complicated structure of welfare grants within the State by making greater use of the so-called "flat grant" system.

In making the calculations forming the basis of the standard of essential needs, the Department did not engage in a county by county analysis of the cost of each of the component items, except with respect to utilities, since the variations in cost between counties was not sufficient to warrant any differentiation. For instance, the relevant schedule of costs published by the Bureau of Labor Statistics, U. S. Department of Labor, which was among the publications used by defendant in making its computations, placed New York City and surrounding counties in the same classification. After defendants thus arrived at proposed levels of need annually, they then relodgeted the case load for the State, taking into consideration the availability of funds at the local level, and recommended revised standards to the State Legislature.

Prior to the recent enactment of § 131-a the last such cost survey made by the State Department of Social Services was in May, 1968, following which the Department, in August 1968, divided the State into three regions known as "SAU 1," "SAU 2" and "SAU 3," for each of which a separate level was established for recipients in that region. The differences between the levels for the three regions were based on variations in utility costs. The region known as SAU 1, as thus established by defendants, included New York City and the counties of Dutchess, Greene, Montgomery, Nassau, Suffolk, Ulster and Westchester (hereinafter

sometimes referred to as the "surrounding counties"). The levels established for recipients in the SA-1 region varied according to the number of persons in each household and the age of the dependent children in the household. The level for a single person household, for instance, was established at $66 per month and was increased in gradations to a high of $464 for a household of 10 persons, the exact amount depending on the age of the various children in the household.' The important fact for purpose of the present application is that as of August, 1968 the Department of Social Services had concluded that the cost of the essential recurring items going into the allowance level for welfare recipients did not vary sufficiently between New York City and its surrounding counties to warrant any differentiation between the standards of needs for such recipients. Title 18, N.Y.C.R.R., § 352.4.'

On March 31, 1969 the New York Legislature enacted § 131-a (Laws of 1969, ch. 184), which established two schedules of maximum flat monthly grants of public assistance (exclusive of shelter and fuel for heating) allowable to recipients, one applicable to New York City and the other to all other social services districts in New York State, as follows:

	Number of Persons in Household							Each
	1	2	3	4	5	6	7	Additional
New York City	70	116	162	208	254	297	340	43
Outside New York City	60	101	142	183	224	257	290	33

A differential in favor of the New York City recipients was thus approved, subject to change or elimination by defendants' promulgation of a schedule of lesser monthly allowance levels for any social services district upon a showing that the total cost of the items required to be provided

in the schedule actually was less than the schedule established by regulations of the Department.

On May 2, 1969, the Legislature amended the recently adopted § 131-a (Laws of 1969, ch. 411) to permit the Commissioner to *raise or lower* the levels of the schedules for all districts except New York City upon a showing that such a revision was warranted by the cost of the items included in such schedules, subject to the condition that the levels of schedules for districts outside of New York City could not exceed the maximums prescribed for New York City. Thus, as finally amended, § 131-a established a maximum level for New York City that could not be reduced by defendants and a lower so-called "maximum" level for all other social services districts that could be reduced or increased (notwithstanding its characterization as "maximum") up to the New York City level.

The Legislature's reason for thus differentiating between New York City and its surrounding counties, and for guaranteeing a maximum level to the welfare recipients in the former while subjecting those in the latter to the possibility of an increase or decrease in assistance at defendants' discretion, is a mystery, particularly in view of the Department's past practice of grouping them in one classification on the basis of data that had not changed prior to the adoption of § 131-a. The "Legislative Findings and Purpose" set forth at the outset of the amendment contain a declaration by the Legislature to the effect that it was necessary to establish schedules "based upon the costs of delivering the needs of public assistance recipients in the respective social services districts of the State." However, the only relevant cost data available to the Legislature was the 1968 cost study that had led the Department of Social Services administratively to establish the schedule of needs for recipients in New York City and surrounding counties at identical levels.

before it any evidence pertaining to the cost or use of such cultural opportunities. On the other hand, plaintiffs have furnished extensive evidence, including detailed analyses of transportation costs made by the Nassau County Planning Commission, establishing that the cost of transportation to museums, clinics and other types of recreational facilities in Nassau is substantially higher than that in New York City.[5] Although defendant apparently concedes that the Legislature did not establish the differential between New York City and surrounding counties upon the theory now advanced by him, he points out that the New York City Department of Social Services, in connection with a 1968 demonstration project which provided for a flat annual cyclical grant of $100 per year in lieu of *special* grants to recipients for certain types of clothing and household items, stated that "the nature of the urban crisis and the higher social cost of living in the metropolitan center requires a differential assistance level in these areas." However, such *special* grants were for items not embraced by the allowances here under consideration. Furthermore, although defendant Wyman had the foregoing statement available to him in 1968, he nevertheless established identical levels for New York City and its surrounding counties. Thus there is nothing in the record before us at this time to support the theory that the Legislature established a differential based upon a higher "social cost of living" in New York City.

In support of their application for preliminary relief plaintiffs urge that § 131-a and the regulations established by defendants thereunder violates their rights under the Equal Protection Clause of the Fourteenth Amendment for the reason that it creates an irrational, unjustifiable inequality between welfare allowances granted to residents of New York City and those of surrounding counties, with the result that even though the gap has been partially re-

duced by defendants' administrative action, it is substantial enough to cause irreparable injury to plaintiffs and persons in the same class, who live at a bare subsistence level and for whom the sum of $5 per month can be crucial in mitigating their hardship and suffering and enabling them to survive. In the alternative, plaintiffs urge that § 131-a violates the provisions of the Social Security Act, 42 U.S.C. §§ 302(a)(1), 1202(a)(1), 1352(a)(1), 1382(a)(1), requiring that standards of need established under a cooperative federal-state assistance program be state-wide and uniform in character.

The Equal Protection Claim

Turning first to the constitutional issue, which forms the basis of this Court's jurisdiction under 28 U.S.C. § 2281, we advert initially to certain fundamental principles by which we are governed in assessing plaintiffs' contention that their rights to equal protection have been violated. At the outset we recognize that since the Equal Protection Clause applies to persons rather than places, "'[t]erritorial uniformity is not a constitutional requisite,'" *Salsburg* v. *Maryland*, 346 U. S. 545, 552 (1953), and that generally "there is no rule that counties, as counties, must be treated alike." *Griffin* v. *School Board*, 377 U. S. 218, 230 (1963). With the needs and desires of its various subdivisions in mind, a state has the constitutional power to legislate in a manner which may create inequalities between those residing within different local governmental units, provided the statutory discriminations rest on grounds relevant to the statute's purposes. *Griffin* v. *School Board*, *supra*; *McGowan* v. *Maryland*, 366 U. S. 420, 425 (1960); *Salsburg* v. *Maryland*, *supra*. However, a legislative discrimination which is purely arbitrary and draws invidious, irrational distinctions cannot withstand a Fourteenth

Amendment attack. *Gulf, Colorado & Santa Fe Ry.* v. *Ellis*, 165 U. S. 150 (1896).

The line between constitutionally permissible and impermissible legislative inequalities is far from crystal clear. "Notions of what constitutes equal treatment for purposes of the Equal Protection Clause *do* change." *Harper* v. *Virginia Bd. of Elections*, 383 U. S. 663, 669 (1965). Certain broad principles, however, are now well established. When the challenged classifications pertain to the conduct of business transactions, the Supreme Court has freely recognized the difficult problems and interests that state legislatures must balance. In such cases, even though the reason for the statute may be unstated and difficult to discern from surrounding circumstances, the presumption in favor of validity is favored. *Brown* v. *Maryland*, 25 U. S. (12 Wheat) 419, 436 (1827), and we are guided by the principle that "[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland*, 366 U. S. 420, 426 (1960) (state Sunday closing laws). Absent an invidious distinction, or one affecting a fundamental or critical personal right, wisdom dictates that in the interest of maintaining a proper balance between state and federal authorities the Equal Protection Clause should not be used to interfere with the state legislative process. The need or appropriateness of legislation is to be determined by the legislature, not the courts, and the latter should not substitute their economic or social beliefs for those of the former. *Ferguson* v. *Skrupa*, 372 U. S. 726 (1962). We do not "sit as a superlegislature." *Salsburg* v. *Maryland*, 346 U. S. 545, 550 (1953). Traditionally such business and economic legislation, even though it might create inequalities, has withstood attack if it could possibly bear some reasonable relationship to the statutory purpose. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61 (1911)

(regulating drilling for natural gas); *Morey* v. *Doud*, 354 U. S. 457, 463, 464 (1957) (regulating use of premises as "currency exchanges"); *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 489 (1954) (regulating the sale of eye glasses); *Ft. Smith Light Co.* v. *Paving Dist.*, 274 U. S. 387 (1926) (imposing duty to repair on street railways).

Where legislative classifications create inequalities affecting the exercise of fundamental or critical personal rights, however, a more stringent standard is applied in determining whether such distinctions are prohibited by the Equal Protection Clause. Particularly where they operate to the detriment of a disadvantaged minority, they are "closely scrutinized and carefully confined." *Harper* v. *Virginia Bd. of Elections*, *supra* at 670. Mere speculation as to a possible rational basis or justification for the distinction is insufficient. "Such a law, even though enacted pursuant to a valid state interest bears a heavy burden of justification, . . . and will be upheld only if it is necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin* v. *Florida*, 379 U. S. 184, 196 (1964) (striking down state law prohibiting interracial marriage). The standard has more recently been described in even stricter terms as one making constitutionality depend upon whether the statute "promotes a *compelling* state interest." *Shapiro* v. *Thompson*, 37 U.S.L.W. 4333, 4339–(1969) (holding unconstitutional residency requirements for welfare payments); see also *Hobson* v. *Hansen*, 269 F. Supp. 401, 506-507 (D. C. 1967) (Wright sitting by designation).

Receipt of welfare benefits may not at the present time constitute the exercise of a constitutional right. But among our Constitution's expressed purposes was the desire to "insure domestic tranquility" and "promote the general Welfare." Implicit in those phrases are certain basic concepts of humanity and decency. One of these,

voiced as a goal in recent years by most responsible governmental leaders, both federal and state, is the desire to insure that indigent, unemployable citizens will at least have the bare minimums required for existence, without which our expressed fundamental constitutional rights and liberties frequently cannot be exercised and therefore become meaningless.' Legislation with respect to welfare assistance, therefore, like that dealing with public education, access to public parks or playgrounds, or use of the mails, deals with a critical aspect of the personal lives of our citizens, whether such assistance be labeled a "right," "privilege" or "benefit." See *Sherbert* v. *Verner*, 374 U. S. 398, 404 (1962). Its importance is magnified by the defenseless and disadvantaged state of the class of citizens to which it relates, who are usually less able than others to enforce their rights. It can hardly be doubted that the subsistence level of our indigent and unemployable aged, blind and disabled involves a more crucial aspect of life and liberty than the right to operate a business on Sunday or to extract gas from subsoil. We believe that with the stakes so high in terms of human misery the equal protection standard to be applied should be stricter than that used upon review of commercial legislation and more nearly approximate that applied to laws affecting fundamental constitutional rights.' Poverty is a bitter enough brew. It should not be made even less palatable by the addition of unjustifiable inequalities or discriminations. It must not be forgotten that in most cases public assistance represents the last resource of those bereft of any alternative. Equity (the state or quality of being equal, derived from the latin *aequitas*), should least of all be denied the poor.'

Applying the foregoing principles to § 131-a of the Social Services Law, we must conclude, on the basis of the record now before us, that the differential between al-

lowance levels established for welfare recipients in New York City and those in surrounding counties constitutes an arbitrary, invidious and irrational inequality in violation of the Equal Protection Clause, even when judged by the traditional, rather than the more stringent, standard. Turning first to the statute itself, if the Legislature had not gone to the trouble of expressly stating its "Findings and Purpose" more room might exist for speculation as to a possible reasonable basis for the unequal treatment of recipients. But its reasons are expressed, and in some detail. While recognizing certain advantages in a uniform schedule of monthly grants and allowances, the statement fails completely to provide any reason for the uneven treatment of recipients in New York City, on the one hand, and those in surrounding counties, on the other, except to imply that it was the result of budgetary considerations.

There is not a scintilla of evidence that the difference between the level of the schedules prescribed by the Legislature for New York City and for its surrounding counties, respectively, could be justified on the basis of a difference in cost of the essential items forming the basis of those levels. Indeed, the evidence before us is clear and undisputed that the cost of those essential items was the same for New York City as for the seven surrounding counties. In the face of such convincing and uncontroverted evidence we cannot, therefore, assume that the Legislature founded the statutory disparity upon a geographical variation in cost of the component items. Nor would we be warranted in upholding the discrimination as being in furtherance of a legislative desire to reduce welfare costs, an objective recently rejected by the Supreme Court in *Shapiro* v. *Thompson, supra:*

> "We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It

> may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot be a independent ground for an invidious classification." (*Shapiro* v. *Thompson*, 37 U.S.L.W. 4333, 4337 (April 22, 1969))

Thus a reduction in welfare benefits is permissible under the Equal Protection Clause only if it is not effected through arbitrary inequalities.

Pursuant to the provisions of § 131-a as enacted by the Legislature, defendant Wyman might have promulgated new schedules for the surrounding counties, which would raise their allowance levels to the level prescribed for New York City. In that event the constitutional issue before us might have become moot, a consideration which prompted the three-judge court in *Rosado* v. *Wyman*, —— F. Supp. —— (1969) to dissolve itself and remand that case to Judge Weinstein.[7] However, although Commissioner Wyman has reduced the gap between the levels for New York City and the surrounding counties by promulgation of new schedules, there remains a difference of approximately $4 to $5 per person between the levels of the two schedules. While this may seem minor to most citizens, it is of crucial importance to the recipients here, who present tragic hardship cases, some of them already the victims of severe cutbacks in other forms of special aid formerly received (e.g., telephone service for medicines

and groceries; food for seeing-eye dogs; transportation allowances to hospitals; special diets for diabetics; readers for the blind; "homemakers" for those confined to wheelchairs; etc.). To an indigent person now receiving approximately 90¢ per day for food, an additional 15¢ per day can hardly be described as *de minimis*. Access to such bare necessities of life, on a non-discriminatory basis, involves a critical interest for those whose life depends on it. The issue has not, therefore, been mooted and the constitutional question remains a substantial one.

The bases advanced by defendant for upholding § 131-a, or at least deferring preliminary relief, are wholly lacking in persuasion. The first of these is that the needs of New York City welfare recipients are greater than those of recipients elsewhere because of what is termed "the higher social cost of living." At first blush there might appear to be something to the proposition that the plight of the welfare recipient living in grim and dismal quarters in a New York City ghetto is so miserable and frustrating that he is led to make greater use of parks, beaches, museums, recreational and cultural centers than is the recipient in the City's suburban counties, particularly since these facilities are within easier reach in New York City. The need for such facilities, referred to euphemistically by defendants as arising from "a higher level of aspiration" and "greater expectations," would require funds not only for transportation but also for payment for use of those not furnished free of charge (e.g., admission fees to a semi-public beach).

In the absence of an iota of evidence to support an assumption that welfare recipients encounter such a "higher social cost of living," we find ourselves unable to accept it. We question whether the aged, blind and disabled are able, in view of their physical handicaps, to make any appreciable use of many of the facilities de-

scribed by the defendant, such as beaches and museums. Furthermore, is it reasonable to assume that welfare recipients living at or below a subsistence level, who are provided for their nutritional needs with less than $1 per day (the buying power of which is diminishing weekly as the cost of living rises sharply), will sacrifice any substantial part of their meager payments in favor of cultural, recreational and educational benefits? We doubt it. Even if it could be shown that a part of such payments is used for these purposes, defendant erroneously assumes that welfare recipients in the suburban counties live in more pleasant and less frustrating surroundings than those in New York City. The picture of suburban welfare recipients living in garden apartments (the term used on oral argument), located on the edge of a park, is an unreal one. It ignores the existence of many rundown tenements in the slum districts of our surrounding suburban counties, which unfortunately provide the principal housing facilities for welfare recipients. Under such circumstances we cannot accept the proposition that recipients living in similar conditions in New York City need or use recreational or cultural facilities more than do recipients in suburban areas.

In any event, extensive and reliable proof has been offered by plaintiffs to the effect that the cost of transportation to recreational facilities, museums, beaches and hospitals in the surrounding counties, such as Nassau, is substantially greater than that incurred by New York City residents who are located closer to such facilities and have cheaper transportation available to them. For instance, while New York City residents can normally travel quickly to parks, beaches, museums and hospitals for the cost of a subway ride (ten cents each way for the elderly, twenty cents for all others), residents out-

side of New York City are faced with public transportation provided by a number of private companies at much higher costs (up to $1.70 per trip), requiring numerous transfers and considerably more time and expense. Consequently, defendants' argument that the disparity in levels is justified by New York City residents' increased need for and cost of transportation to such facilities must be rejected on the record before us.

We also find no merit in defendants' further argument, that in view of the pendency of a petition by Nassau County for an increase in the allowance levels promulgated for it and the availability to surrounding counties of various other state remedies as a means of seeking an increase in the level of payments available to them, the constitutional issue is not ripe for determination. The situation has changed substantially since the three-judge court in *Rosado* v. *Wyman* dissolved itself on the ground that the issue raising its jurisdiction (essentially the issue now before this Court) might be rendered moot by administrative action. Administrative action now has been taken and it has failed to moot the issue. Any further delay could work substantial and irreparable injury to plaintiffs. We have no assurance that the issues would be promptly resolved by any of the state court procedures suggested by defendants. No reasons exist, therefore, for abstention;[12] and exhaustion of state court remedies is not a prerequisite. *King* v. *Smith*, 392 U. S. 309, 312, fn. 4 (1968); *Damico* v. *California*, 389 U. S. 416 (1969); *McNeese* v. *Board of Education*, 373 U. S. 668 (1963); *Frozen Food Express* v. *United States*, 351 U. S. 40 (1956); *Holmes* v. *New York City Housing Authority*, 398 F. 2d 262 (2d Cir. 1968).

The Claim of Violation of the Social Security Act

In view of our disposition of the constitutional issue, upon which our jurisdiction is grounded, it is unnecesary to dwell at length on plaintiffs' alternate contention that § 131-a violates applicable provisions of the Social Security Act, an issue over which this Court has pendent jurisdiction. *Smith* v. *King*, 277 F. Supp. 31 (1967). Plaintiffs' argument is founded on the proposition that 42 U.S.C. § 302(a)(1) and § 1382(a)(1), and regulations promulgated thereunder by the Department of Health, Education and Welfare ("H.E.W."), require states participating in federally-financed assistance programs to conduct them on a state-wide basis pursuant to uniform standards. Applying that principle here, plaintiffs contend that, while the application of such uniform standards may lead to different levels of assistance in different areas of a state, § 131-a is fatally defective for the reason that it simply creates disparities arbitrarily and without adoption or application of uniform standards. See *King* v. *Smith*, 392 U. S. 309, 326-327 (1968).

Section 302 deals with state plans for old-age assistance and medical assistance for the aged while § 1382 is concerned with State plans for aid to the aged, blind and disabled, and medical assistance for the aged. Both statutes require in subsection (a)(1) that any such plan

> "... provide that it shall be in effect in all political subdivisions of the State, and, if administered by them be mandatory upon them."

Further support for a requirement of state-wide uniform standards is found in regulations recently promulgated by the H.E.W., 34 *Federal Register* No. 19, pp. 1394-1395 (Jan. 29, 1969), and codified as 45 C.F.R. § 233.20, which

direct that state plans "[p]rovide that the standard [of assistance] will be uniformly applied throughout the State," 45 C.F.R. § 233.20(2)(iii), and

> "[p]rovide that payment will be based on the determination of that amount of assistance needed and that, if full individual payments are precluded by maximums or insufficient funds, adjudgments will be made by methods applied uniformly statewide. 45 C.F.R. § 233.20(3)(viii)."

On their face the foregoing provisions of the Social Security Act and regulations would appear to be aimed at the fundamentally sound objective of assuring that persons in like circumstances should be treated equally throughout a state rather than exposed to the type of unfair hodge-podge that could result from adoption of different eligibility standards or other criteria for different areas. Indeed, a quotation cited by plaintiffs from a letter of James Callison, H.E.W. Regional Commissioner for Region II (which includes New York State) to defendants, dated April 16, 1969, indicates this was the H.E.W.'s objective in inquiring whether the differential between levels promulgated under § 131-a for New York City and other areas of the State "may be justified on the basis of differences in the cost of living in local areas." Plaintiffs' non-constitutional argument, however, is based primarily on regulations promulgated by H.E.W. Since the schedules and regulations adopted by defendants are now under review by that agency, which possesses considerable expertise with respect to its own regulations and should be entitled to interpret them in the light of the complexity of problems presented by various welfare programs, see 45 C.F.R. § 233.20(1), we at this stage defer determination as to the requirements of the Social Security Act in anticipation of a ruling by H.E.W.

Preliminary Relief

Having thus made a clear showing of probable success, plaintiffs have also demonstrated that denial of preliminary relief will work a much more severe hardship upon them, amounting to irreparable injury, than any hardship that would result to defendants from the granting of preliminary relief. *Clairol Incorporated* v. *Gillette Company*, 389 F. 2d 264 (2d Cir. 1968); *Unicon Management Corp.* v. *Koppers Company*, 366 F. 2d 199, 204 (2d Cir. 1966); *Dino de Laurentiis Cinematographica, S.p.A.* v. *D-150, Inc.*, 366 F. 2d 373, 375 (2d Cir. 1966). To plaintiffs the difference between the monthly payments to them and to recipients in New York City represents the bare essentials of life, whereas if defendants should ultimately prevail any such differentials paid in the interim to plaintiffs and others similarly situated would be recoverable or offset against future allowances. Since no issue has been raised, upon this application for preliminary relief, as to the classification of the lawsuit as a class action under Rule 23, F.R.C.P., the action will be treated as such for purposes of temporary relief.

Accordingly, plaintiffs' motion for preliminary relief is granted to the extent that pending trial and final determination of the action defendants will be restrained from further enforcement or implementation of § 131-a of the New York Social Services Law, or from promulgating schedules of grants and allowances of public assistance, or making payments thereof to recipients, other than according to objective, non-discriminatory standards based upon the cost of the needs of such recipients. Trial of the action will commence on October 6, 1969 at 10:00 A.M. Defendants' motion for summary judgment is denied.

The foregoing constitutes the Court's findings of facts and conclusions of law pursuant to Rule 52(a), F.R.C.P.

Submit order on notice in accordance with Rule 65(d), F.R.C.P.

Dated: August 4, 1969.

s/
Paul R. Hays,
U. S. Circuit Judge

s/
Walter R. Mansfield,
U. S. District Judge

s/
Constance Baker Motley,
U. S. District Judge

Footnotes

[1] "A state plan . . . must . . . provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them." 42 U.S.C. § 302(a)(1) (Old Age Assistance). Identical requirements are found in § 1202(a)(1) (Aid to the Blind); § 1352(a)(1) (Aid to the Permanently and Totally Disabled); and § 1382(a)(1) (the combined program of Aid to the Aged, Blind or Disabled and Medical Assistance to the Aged). Since New York administers a composite program under § 1382, that statute will be refered to herein as the basis for plaintiffs' claim.

[2] In 1968 the City of New York with H.E.W. approval, established a demonstration project authorizing the elimination of *special* grants for certain clothing and household replacements and the payment, in lieu thereof, of the sum of $100 per year to each recipient. This experiment in the flat grant approach to public assistance was believed by some to offer certain advantages, including less affront to a recipient's dignity than the special grant method, more opportunity for the recipient to budget, reduction of administrative costs, and freeing caseworkers for counseling duties.

[3] "352.4 *Needs—items of basic maintenance*

. . . . . .

"(2) The pre-added monthly allowance schedule for food, clothing, personal incidentals, household supplies, school expenses, utilities, laundry for AABD, expenses incident to AABD, including sales taxes related thereto, shall be as follows." (Codes Rules and Regs. of State of N. Y. Title 18, § 352.4)

There follows a schedule of identical monthly sums for New York City and the Counties of Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester.

[4] Plaintiffs have introduced extensive evidence supporting the conclusion that New York City and surrounding counties should be treated identically. The United States Department of Labor's Bureau of Labor Statistics prepares and presents costs of living material for the New York metropolitan area without drawing any distinction in living costs between New York City and the surrounding counties, whereas distinctions are drawn between such metropolitan area and the rest of the state. See, e.g., *Three Standards of Living for an Urban Family of Four Persons*, U. S. Dept. of Labor, 1969, p. 16; *Standard Metropolitan Statistical Areas*, U. S. Bureau of the Budget, 1967.

Footnotes.

A comparison of cost figures published by New York City, Westchester and Nassau for major items forming components of the grant levels under consideration reveals that the cost of most basic items of food and clothing are identical, where as most household furnishings cost more in Westchester and Nassau than in New York City, possibly because of greater competition and more second hand stores in New York City. See *Handbook for Case Units*, New York City Dept. of Social Services, Jan. 1968; *Price Guide Bulletin* #9, Westchester County Dept. of Social Service (1967); *Price Guide—Clothing & Household Furnishings*, Nassau County Dept. of Social Services, Oct. 1, 1968.

[8] See affidavit of John Calbreath Burdis, Planning Director, Nassau County Planning Commission, and exhibits thereto.

[9] Welfare assistance does represent a statutory right, as distinguished from charity. If a person meets the requirements prescribed by statute under a federally assisted program, the agency is obligated to recognize his claim. See Reich, The New Property, 73 Yale L. J. 733, 785-786 (1964); Note, Development in Law, Equal Protection, 82 Harv. L. R. 1065, 1192 (1969).

[10] The concept was expressed by President Roosevelt in his June 8, 1934 message to Congress recommending legislation on economic security:

> "Among our objectives I place the security of the men, women, and children of the Nation first.
>
> "This security for the individual and for the family concerns itself primarily with three factors. People want decent homes to live in; they want to locate them where they can engage in productive work; and they want some safegurad against misfortunes which cannot be wholly eliminated in this man-made world of ours."

The substance of the message has been repeated by every President since that date.

[11] Our constitutional guarantees dictate the abandonment of a philosophy, which has long prevailed in many quarters, that the poor and disabled must be treated as "nonperson allowed to receive charity but not entitled to equal rights."

[12] The surrounding counties would still be discriminated against to the extent that § 131-a, as amended, guarantees New York City recipients the maximum level, whereas those in surrounding counties are forced to establish that the total costs of items included in the schedules applicable to their districts is more than the cost thereof

reflected in such schedules. Since the evidence before us, however, indicates that the costs are identical, the Commissioner would be required to raise the levels of the surrounding counties to that of New York City.

[10] The standards promulgated under the Social Services Law are described by Joseph S. Barbaro, Commissioner of Social Services for Nassau County, who has carefully studied the needs of welfare recipients, as follows:

> "The present standards of assistance provide for life on a level of sustenance, nothing more, and often less. The standards which will go into effect on July 1, 1969 provide for even less." (Aff. of Joseph S. Barbaro, sworn to June 19, 1969)

[11] For example, the United States Department of Labor announced that for the first six months of 1969 the cost of living in the New York City area was increasing at the rate of 6.4% per year, which continued the trend experienced in 1968. New York Times, July 24, 1969, page 1, col. 1.

[12] Unlike the situations in *Harrison* v. *N.A.A.C.P.*, 360 U. S. 167 (1959), and *Fenster* v. *Leary*, 264 F. Supp. 153 (S.D.N.Y. 1966), *aff'd.* 386 U. S. 10 (1967), the facts here reveal a classic instance of the type of special circumstance calling for exercise of federal jurisdiction. See *Baggett* v. *Bullitt*, 377 U. S. 360 (1964); *Dombrowsky* v. *Pfister*, 380 U. S. 479 (1965); and *Zwickler* v. *Koota*, 389 U. S. 241 (1967).

Preliminary Injunction Order.

Plaintiffs having moved this Court for a preliminary injunction staying the enforcement of § 131-a of the New York Social Service Law and regulations promulgated thereunder in a manner which discriminates against recipients of Aid to the Aged, Blind, and Disabled in certain counties outside the City of New York, and defendants having moved this Court for summary judgment, and these motions having been considered by this Court:

Upon the pleadings, affidavits, briefs and oral depositions submitted on behalf of the parties, the hearings held to date, and the opinion of this Court dated August 4, 1969, this Court having found in said opinion that the differential established by § 131-a and regulations promulgated thereunder between public assistance grants to recipients of Aid to the Aged, Blind or Disabled residing in New York City and those to residents of the counties of Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester constitutes an arbitrary, invidious and irrational inequality in violation of the Equal Protection Clause, it is

ORDERED, ADJUDGED AND DECREED THAT

1. Pending further order of this Court or termination of this action, defendants, their agents and employees are restrained from the enforcement or implementation of § 131-a of the New York Social Service Law with respect to recipients of Aid to the Aged, Blind and Disabled, or from promulgating schedules of grants and allowances of public assistance or making payments thereof to such recipients, other than according to objective, non-discriminatory standards based upon the cost of the needs of such recipients;

2. Defendants' motion for summary judgment is denied.

Dated: New York, N. Y., September 12, 1969.

PAUL R. HAYS
Paul R. Hays, U.S.C.J.

WALTER R. MANSFIELD
Walter R. Mansfield, U.S.D.J.

CONSTANCE BAKER MOTLEY
Constance Baker Motley, U.S.D.J.

Order to Show Cause—Re: Leave to Intervene.

LET defendants show cause in Courtroom No. 1106 of the United States Courthouse, Foley Square, New York, New York, on the 10th day of October, 1969, at 3:30 P. M. or as soon thereafter as counsel may be heard why an order should not issue or the Court take such other action as shall grant the plaintiffs herein the following relief:

(1) An order pursuant to F.R.C.P., Rule 24 granting plaintiffs Jones and Harvenek leave to intervene in the instant cause of action on behalf of themselves and of all other persons similarly situated, making said persons parties to this cause, and permitting said party plaintiffs to file instanter the complaint herein in the same manner and with like effect as if named an original party to this cause.

(2) An order amending the caption of the instant action to include the two named plaintiffs herein.

(3) A preliminary and permanent injunction restraining and enjoining defendant Wyman, his successors in office, agents and employees, and all persons in active concert and participation with them, from taking any steps toward implementing and enforcing the system of "maximum monthly grants" and schedules of need prescribed by New York Social Services Law § 131-a, added by Laws Ch. 184, March 31, 1969, as amended May 2, 1969, Laws Ch. 411, under the Aid to Dependent Children program.

(4) The convening of a statutory court of three judges for the purpose of hearing and determining this application for a preliminary and permanent injunction in accordance with the provisions of Title 28, United States Code, §§ 2281 and 2284.

(5) An order determining that this action may properly proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Order to Show Cause—Re: Leave to Intervene.

LET the defendants further show cause why a temporary restraining order pursuant to Title 28 United States Code, § 2284 should not issue restraining the defendant, his successors in office, agents and employees, and all persons in active concert and participation with them, from enforcing the system of "maximum monthly grants" and schedules of need prescribed by New York Social Services Law § 131-a, as amended, pending the hearing and determination of plaintiffs' motion for a preliminary and permanent injunction by a three-judge court convened pursuant to Title 28, United States Code, §§ 2281 and 2284.

Plaintiffs seek this temporary restraining order and preliminary and permanent injunction on the grounds that:

(1) Enforcement of § 131-a, as amended, results in a denial of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States and in violation of § 1602(a)(1) of the Federal Social Security Act, 42 U.S.C. § 302(a)(1), and related sections and regulations promulgated thereunder.

(2) Plaintiffs are suffering, and are threatened with, irreparable injury in that as of July 1, 1969, the effective date of § 131-a, they have been without means to provide for themselves and their children the basic necessities of food, clothing and essential medical care, as alleged in the annexed complaint and affidavits of Catherine Jones dated October 3, 1969, Dolores Harvanek, dated October 3, 1969. It is also alleged in the annexed affidavit of Burr C. Hollister, of Counsel to the attorney for plaintiffs, dated October 3, 1969, that immediate action is required to halt implementation of § 131-a, and its consequent irreparable harm.

(3) The issuance of a temporary restraining order and preliminary injunction will not cause undue inconvenience

or loss to the defendants, but will prevent irreparable injury to the plaintiffs.

(4) Plaintiffs have no adequate remedy at law, as set forth more fully in the complaint and affidavits of Catherine Jones and Dolores Harvenek, attached hereto.

IT IS ORDERED that service of this order on defendants at the New York City office at 270 Broadway, New York, New York, or upon the Attorney General of the State of New York, at his office at 80 Centre Street, New York, New York, and upon the attorney for the original named plaintiffs, Lee A. Albert, Esq., at his office Columbia Center on Social Welfare Policy and Law, 409 West 117th Street, New York, New York, and Avram Weisberger, Esq. at his office at City Hall Building, Roosevelt Square, Mount Vernon, New York, on or before the 6th day of October, 1969, be deemed sufficient at 5:00 P.M.

IT IS FURTHER ORDERED that service of this Order may be by any of the attorneys for plaintiffs-applicants to intervene in this action.

Done and ordered at the
United States Courthouse,
Foley Square, New York,
this 6th day of
October, 1969, at
o'clock 2:30 P.M.

/s/ CONSTANCE BAKER MOTLEY,
United States District Judge.

Affidavit of Burr C. Hollister, in Support of Application for Leave to Intervene.

BURR C. HOLLISTER, being duly sworn, deposes and says that:

1. I am an attorney with the Nassau County Law Services Committee, Inc., with offices located at 150 Old Country Road, Mineola, New York and I reside at 20 Wendell Street, Hempstead, New York.

2. I submit this affidavit in support of the motions made by my clients, Catherine Jones and Dolores Harvanek, on behalf of themselves, their children and all other similarly situated in the Aid to Dependent Children program, residing in Nassau and other suburban counties, for (1) leave to intervene in the instant action and to amend the caption herein to include their names as representatives of the Aid to Dependent Children class, (2) a Temporary Restraining Order and immediate convening of a three-judge District Court pursuant to 28 U.S.C. § 2281 and § 2284 and (3) a Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

3. Plaintiffs seek a declaratory judgment that New York Social Services Law § 131, as amended, Laws Ch. 184 March 31, 1969, and § 131-a, added Laws, Ch. 184, March 31, 1969, as amended, Laws Ch. 411, May 2, 1969, violate the Social Security Act § 302(a)(1) and the regulations promulgated thereunder, specifically 45 CFR 5233.20, 34 Fed. Reg. 1394 and Handbook of Public Assistance, Pt. 11 § 4000 *et seq.* and the Fourteenth Amendment to the Constitution of the United States insofar as said sections have the effect of denying equal protection of the law to plaintiffs by affording to them a different and lesser quantum of public assistance than is afforded to others similarly situated solely because of their place of residence.

4. Plaintiffs assert that the Social Security Act compels the State of New York, a recipient of funds thereunder, to distribute public assistance under the Aid to Dependent Children Programs, "uniformly"; that differentials are permissible only where there is proven factual justification based on differences in cost; that in fact the cost of living in affluent suburban counties such as Nassau is as high and in some instances demonstrably higher than the cost of living in neighboring New York City; and that accordingly, implementation of the statutory scheme violates plaintiffs' rights under the Fourteenth Amendment of the Constitution and under the Social Security Act.

5. As appeared more fully in the memorandum of Law submitted initially on behalf of the original plaintiffs herein, representatives of persons receiving assistance under the Aid to the Aged, Blind and Disabled program, these standards alter substantially the structure of assistance payments existing in New York State prior to July 1, 1969. Residents of New York City and surrounding suburban counties such as Nassau who were in need, received the same amounts of public assistance at all times prior to July 1, 1969, based on a determination that living costs were the same for all those counties and the City of New York. The new schedules mandated grants for suburban recipients far below those available to New York City residents.

6. On May 2, 1969, the Legislature amended the new § 131-a to permit the State Commissioner of Social Services to authorize higher or lower schedules in areas where costs of living varied from the costs reflected in the legislative schedules. No grants can exceed those established by the Legislature for the New York City.

7. On or about June 5, 1969, defendant Wyman, the Commissioner of the New York State Department of Social Services promulgated a new schedule of grants under which Nassau recipients of Aid to Dependent Children (and certain other suburban residents) receive assistance as follows:

Number of Persons in Household

1	2	3	4	5	6	7	Each Additional
$65	$107	$149	$191	$233	$270	$307	$37

(See Appendix to original complaint herein.)

8. These amounts remain significantly below New York City standards and below living costs in the counties where they are applicable.

9. Plaintiffs-applicants herein receive assistance in the Aid to Dependent Children program in New York State and seek to intervene in order to represnt said ADC class in instant action and to challenge the new legislation as violative of the applicable federal statutory and Constitutional requirements, in an identical manner and capacity as the original plaintiffs proceeded herein. The new legislation enacted by §131-a affects plaintiff-applicants, Jones and Harvanek, in an identical manner, if not more serevely:

(a) the prior schedules and rules applicable to their families prior to July 1, 1969, were the same as those for the AABD categories except that, on one hand, certain recurring specific special allowances were available for blind, aged and disabled persons and, on the other hand, school lunch allowances were available at $6.10 for each child in ADC attending school. Grants for basic maintenance, special diets, special clothing and furniture grants, medical transportation, and so forth were identical for AABD and ADC recipients. See 18 N.Y.C.R.R. 352.4 and 352.5

(8/23/68, replaced by 18 N.Y.C.R.R. 352.4 effective 6/30/69);

(b) the new schedules and regulations, effective July 1, 1969, made no distinction whatever between ADC and AABD recipients and the flat grant amounts are computed based on the same figures;

(c) the ADC families differ only in having more persons figure into the budget computation; since both the reduction in assistance levels and the significant differential in grants between New York City and surrounding suburban counties is reflected in a corresponding and identical manner for all categories of assistance regardless of the number of persons in the family, the position of plaintiffs-applicants Jones and Havanek, is identical in all respects to that of the original plaintiffs. Hence, original plaintiff Rothstein was subjected to a $20.00 cut in her monthly grant and to a $5.00 differential by the new legislation as between New York City and Nassau; plaintiff Harvanek suffered a cut of $69.05 in the family budget plus a differential of $33.00 for the family as a whole, or $4.71 per person, as between New York City and Nassau;

(d) elimination of the special grants for school and camp clothing which are so vital to growing children who outgrow and wear out clothing at a rapid rate, the loss of school lunch allowances, and the lack of medical transportation grants for multiple children have effected a particularly severe hardship upon ADC families, increasing the extremely heavy demands on their already reduced budgets, making the $4.00 or $5.00 monthly differential between a child in New York City and one in Nassau especially injurious and discriminatory;

(e) On September 25, 1969, Commissioner Wyman ordered a special allowance only for AABD recipients of $8.00 for individuals living alone and $5.00 for persons

living with families, effective October 1, 1969, in addition to ordering AABD recipients in SA-1 counties raised to the New York City level. These developments have further heightened the discriminatory effect of the new legislation upon ADC families;

(f) the ADC plaintiffs have a significant interest in the transaction which is the subject matter of this action, the enactment of § 131-a of the Social Service Law, since such families suffered both a cut and discriminatory differential without a rational basis therefor as set forth above; such plaintiffs will certainly be affected and circumscribed by any judgment in this action, and unless intervention herein is permitted, their interests will not be protected; the ADC recipients seek to bring before this Court the peculiarly hard effect of the new legislation upon dependent children at formative, developing stages of their lives, which cannot adequately be done by the originally named plaintiffs;

(g) the claims of AABD and ADC recipients herein present identical questions of law as to the validity of § 131-a of the Social Services Law (compare original complaint with that submitted herewith); requiring ADC recipients to bring a separate action would cause duplication of all matters in separate courtrooms and serious confusion arising out of such parallel processing of identical cases would result; permitting intervention serves the interests of judicial economy and order.

10. Plaintiffs Jones and Harvanek rely upon the proof heretofore submitted by the original plaintiffs, in support of their equal treatment claim;

(1) State standards of assistance in effect prior to July 1, 1969 as to ADC families apply the same standards for New York City and Nassau County families, the only dif-

ference being utility costs. (See schedules for "SA-1" region in 18 N.Y.C.R.R. 352.5).

(2) Handbooks of New York City and Nassau County Departments of Social Services with price guidelines that indicate that costs of vital items of clothing and furniture are identical or higher in suburban counties.

(3) A statistical analysis of public assistance expenditures which indicate that the monthly aid to each recipient as of October 1968 was significantly higher in Nassau and Westchester counties than the monthly aid to recipients in New York City.

(4) A detailed analysis of transportation costs by the Director of the Nassau County Planning Commission establishes the high cost of transportation in Nassau County. (See affidavit of John Burdis attached to plaintiffs' original Memorandum of Law).

(5) The U. S. Labor Department's Consumer Price Index treats the entire metropolitan area as one entity and does not even attempt to assess costs within that area, because both areas are serviced by the same major retail outlets, department stores, supermarkets, etc., who advertise and charge similar prices throughout the metropolitan area. This, together with the mobility of most of the urban-suburban population precludes price variations of any significance within the area.

(6) Commissioner Wyman's deposition covers matters related to costs for all families living in New York City, Nassau and suburban counties. The same factors of legislative failure to investigate into cost of living needs, lack of a cost study (Deposition P. 26), special grants (P. 41), "social cost of urban living" (P. 36), transportation (P. 46), recreation facilities (P. 43, 47) and welfare centers (P. 46), apply with equal force to ADC recipients as in-

dicated by the lack of particular or limiting references to AABD persons in the commissioner's deposition; in fact, specific reference is made to families with ten people (P. 19) and day care center (P. 48) which would apply primarily to ADC families. In effect, Wyman's deposition is proof of the lack of any rationale for the New York City v. Nassau and suburban counties discrimination as to ADC families enacted by the new law.

11. Plaintiffs are recipients of and under the federally reimbursed and supervised categorical program of Aid to Dependent Children:

(a) Prior to July 1, 1969 Plaintiff Jones received $229.75 per month for herself and three children; this amount was cut on July 1, 1969 to $191.00; similarly situated recipients in New York City now receive $208.00 or $4.25 per person more;

(b) Prior to July 1, 1969, plaintiff Harvanek received $376.05 per month for herself and six children; this grant was reduced to $307.00 on July 1, 1969; a similarly situated recipient in New York City now receives $340.00 or $4.71 per person more.

12. These plaintiffs represent the class of recipients receiving Aid to Dependent Children and residing in Nassau County and other SA-1 counties.

13. The severe, irreparable and immediate injury, already found to be caused by the new legislation to the AABD plaintiffs, is present to an even more serious degree for plaintiffs Jones and Harvanek; the loss of special grants for school clothes, school lunches, special medically required diets, telephones and transportation and severe reduction in the regular monthly grant has created great strain and hardship on families with young, growing, for-

native children whose future opportunities in life are dependent upon being presently adequately provided for; the differentials of $4.00 to $5.00 per child and parent between New York City and suburban counties, in the context of a minimal subsistence existence of $45.00 to $47.00 per person per month is causing irreparable harm to suburban residents; in view of this, the fact that, with no cost of living justification, the plaintiffs herein are denied that minimal assistance available to identically situated children in New York City, causes them to suffer an irrational and invidious deprivation and discrimination. The health, well being and future life of such children and their parents are presently being injured by the implementation of § 131-a and said injury will become irreparable and permanent unless that statute's enforcement is enjoined.

14. In view of the recent changes made by Commissioner Wyman, the recurring allowances to recipients in the AABD programs increasing all monthly grants and equalizing suburban counties with New York City, and the lack of any differences between the AABD and ADC categories, the deficiencies and disparities presently being endorsed as to ADC families effects a particularly severe discrimination as to such ADC recipients.

WHEREFORE, plaintiff-applicants-to-intervene respectfully request (1) leave to intervene in the instant action, to file the attached complaint herein, and to amend the caption herein to include the names of Catherine Jones and Dolores Harvanek; (2) a Temporary Restraining Order prohibiting the defendants and his agents from enforcing Section 131-2 of the Social Services Law as to families receiving Aid to Dependent Children living in SA-1 counties, and enjoining the defendants and their agents from promulgating schedules of grants and allowances of

public assistance or making payments thereof to such recipients other than according to objective, non-discriminatory standards based upon the cost of the needs of such recipients; (3) an Order immediately convening a three judge District Court; and (4) a Preliminary Injunction granting the relief requested for the Temporary Restraining Order; (5) such other and further relief as to the Court may seem just and proper.

(Sworn to by Burr C. Hollister, October 3, 1969.)

Affidavit of Catherine Jones.

CATHERINE JONES, being duly sworn, deposes and says:

1. I reside at 71 Laurel Avenue, Hempstead, New York with my three children, Roberta age 16, Melvin age 14, and Elmer age 12.

2. My husband abandoned myself and our children two years ago and has failed to support us. Since that time, I have received public assistance from the Nassau County Department of Social Services in the Aid to Dependent Children Category.

3. My monthly allowance, prior to July 1, 1969, not including rent and fuel, was:

Basic Needs	$207.00
Phone	4.45
School Lunch	18.30
	$229.75

All my children attend school in Hempstead and I have a diabetic condition and high blood pressure for which a special grant was made until December 1968.

4. Commencing July 1, 1969 I have received $191 per month, not including rent and fuel and I have been denied all special grants for my diet, school lunches, and clothing.

5. This reduction has forced me to go frequently without food and to deprive my children of clothing and adequate nutrition. The strain on our family is very great and I do not know if I can hold us together with the pressure of this 12% decrease because my children's needs become greater each day.

6. I urge this Court to grant the relief requested.

(Sworn to by Catherine Jones, October 3, 1969.)

Affidavit of Dolores Harvanek.

DOLORES HARVANEK, being duly sworn, deposes and says:

1. I reside at 99 Park Avenue, Baldwin, New York, with my six children, Edward, age 17, Georgie, age 14, Andrew, age 13, Laura, age 12, John, age 9, and Victoria, age 8.

2. My husband and I separated in 1962 and he has failed to support myself and our children; I am, and have been for several years, receiving public assistance in the Aid to Dependent Children Category from the Nassau County Department of Social Services.

3. Prior to July 1, 1969, I received a monthly grant of $376.05, exclusive of rent and fuel, comprised of Basic needs $335, Phone $4.45 and School Lunch $36, in addition to periodic special grants for clothing as the children's wardrobes became depleted.

4. Since July 1, 1969, the grant for our family has been $307, exclusive of rent and fuel, comprised of a flat grant amount; all special grants for clothing, furniture and transportation have stopped.

5. Georgie, Andrew and I have asthmatic conditions and we require frequent visits to our doctor for shots; Georgie and Victoria have chronic eczema conditions. The strain of the reduction in my budget is causing my family great hardship such that I cannot provide adequately for my children, and it is increasingly difficult to control them if I cannot provide for at least their basic needs.

There is not enough for food or clothing; I had to keep several of my children home from school for a week because they did not have adequate clothing and all of my grant was needed for food and other vital necessities.

6. I urgently plead this Court to provide the relief requested.

(Sworn to by Dolores Harvanek, October 3, 1969.)

Intervenor's Complaint.

I

Plaintiffs on behalf of themselves and all other persons similarly situated seek a declaration that New York Social Services Law, §§ 131 as amended Laws Ch. 184, March 31, 1969 and 131-a added Laws Ch. 184, and as amended Laws Ch. 411, 1969 are in violation of the Fourteenth Amendment to the Constitution of the United States insofar as said sections have the effect of denying equal protection of the law, and are violative of the Social Security Act 42 U.S.C. § 301 et seq. and the regulations promulgated thereunder.

Plaintiffs seek to enjoin any action under the aforesaid Statutes to reduce the quantum of public assistance that they and others similarly situated received prior to July 1, 1969.

II

Preliminary Statement

On March 29, 1969, the Legislature of the State of New York enacted § 131-a of the Social Security Law (see Exh. A orig. complaint) reducing by significant amounts the "standards of need" and actual grants paid to public assistance recipients in New York, as hereinafter more fully set forth. Such reductions were made pursuant to express legislative findings in the Act of a "spiraling rise of public assistance rolls and the expenditures therefor," the "economic concern of the people of the State of New York," and the necessity for the legislature to set "the costs of delivering the needs of public assistance recipients in the respective social services districts of the states." Law Ch. 184, § 1, March 31, 1969.

The aforesaid standards and maximum grants were fully implemented on July 1, 1969.

The New York Act is in direct conflict with the requirements of federal law, denies recipients of public assistance in New York the protections and entitlements afforded them by federal law, and causes serious and irreparable harm to said recipients. Specifically, as hereinafter more fully set forth, the New York requirements unreasonably and irrationally limit standards and maximums of grants to recipients who receive on behalf of themselves and their infant children, Aid to Dependant Children and who reside in Nassau County and elsewhere outside of New York City to levels significantly lower than those applicable to recipients similarly situated who reside in New York City despite similarity in living costs. The latter distinctions violate federal statutory requirements mandating uniform standards of need and maximum grants throughout the state, set forth hereinafter, and additionally, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

III

Jurisdiction

The jurisdiction of the Court is based upon:

a) 28 U.S.C. §§ 1331, 1337 and 1343

b) 28 U.S.C. §§ 2201 and 2202

c) 42 U.S.C. §§ 1983 and 1988

d) United States Constitution, Article VI and the Fourteenth Amendment

The amount in controversy, exclusive of interests and costs, exceeds $10,000.

IV

Statement of Claim

1. Pursuant to the Social Security Act of 1935, 42 U.S.C. § 301 et seq., New York cooperates with the Federal Government in providing public welfare assistance to needy persons under a New York "state plan", consisting of state statutes and regulations and approved by the United States Department of Health, Education and Welfare. In order to participate in said program New York must comply with all pertinent federal statutes and regulations.

2. Pursuant to the state plan, eligible individuals receive regular recurring semi-monthly or monthly checks for food, rent and other items of basic subsistence. Grants are given for food, household supplies, and recurring personal needs, and a separately computed amount for actual rent and utilities. It is the basic grant for food and recurring needs that is at issue in this case.

3. Prior to September 1968, all recipients in New York State were also eligible for "special needs" grants to provide for lacking, deteriorated or outgrown items of furniture, clothing, kitchen supplies and other items. The provision for such grants recognized that the "regular and recurring" grant did not provide sufficient monies to recipients to permit them to purchase or replace the needed items which were the subject of the "special needs" grants.

4. Among other things, the "special needs" grants provided monies for the purpose of:

(a) Supplying families with an amount for home furnishings and clothing consistent with a minimal standard

of health and decency at the time a family began receiving public assistance and from time to time thereafter.

(b) Replacing essential items of home furnishings and clothing as they became worn out, unsafe, or a hazard to health.

(c) Providing for telephones for those demonstrating medical or other necessity, special diet requirements pursuant to doctor's orders, washing and drying expenses, restaurant meals for those unable to cook at home, travel for welfare and medical business, school lunches for children, layette for new-born infants, job-hunting expenses, school fees, burial expenses, and so forth.

5. On August 27, 1968, as the result of a substantial increase in special needs grants in New York City because of proper payments for legitimate needs, the City effectuated under the guise of a "demonstration project", a substantial reduction in its expenditures and in the amounts paid to many needy families by eliminating all special needs grants for clothing and household furnishings and providing instead a "special flat quarterly grant" totalling $100 per year per recipient allegedly to cover the cost of such items. Said "special flat quarterly grant" is an addition to the "regular and recurring" grant. Recipients continued to remain eligible for grants for the items of special need enumerated in paragraph (4)(c) above.

6. The so-called "special flat quarterly grant" at no time applied to persons residing in counties of New York State other than those constituting the City of New York. Recipients outside of New York City continued to be eligible for all special needs grants. Thus plaintiffs herein continued to receive grants for special needs under the then existing § 131 of the Social Services Law.

7. On or about March 29, 1969, the New York State Legislature, which had previously authorized the State Department of Social Services to establish grant levels, adopted Social Services Law § 131-a and set its own standards of need and maximum grants, exclusive of rent and fuel, for persons living in New York City, as follows:

Number of Persons in Household							
One	Two	Three	Four	Five	Six	Seven	Additional For Each Person
$70	$116	$162	$208	$254	$297	$340	$43

and the following standards of need and maximum grants for recipients outside of New York City:

Number of Persons in Household							
One	Two	Three	Four	Five	Six	Seven	For Each Additional Person
$60	$101	$142	$183	$224	$257	$280	$33

8. (a) Thereafter by Laws, Ch. 411, May 9, 1969, the said section 131-a of the Social Services Law was amended to provide:

> Provided it accords with federal requirements, the regulations of the department shall provide that the commissioner, with respect to any social services district to which subdivision three applies, may promulgate a schedule of monthly grants and allowances for greater or lesser amounts than established by the regulations of the department applicable to such district, but not to exceed the maximums prescribed by subdivision two, for all items of need exclusive of shelter and fuel for heating, if it is established that in such dis-

trict the total cost of the items included in the schedule applicable to such district actually is more or less, as the case may be, than the cost thereof reflected in such schedule. A social services official may, with the approval of the appropriate local legislative body, make application to the department for the promulgation of a schedule pursuant to the subdivision. (See Exhibit B, orig. complaint.)

(b) Thereafter on or about June 5, 1969, a Bulletin (See Exhibit C original complaint), was issued and a schedule (SA-2) was adopted by the New York State Department of Social Services setting forth standards of assistance for recipients of public assistance in Nassau and Westchester Counties and in certain other counties which became effective July 1, 1969, as follows:

One	Two	Three	Four	Five	Six	Seven	For Each Additional Person
$65	$107	$149	$191	$233	$270	$307	$37

(c) As the result of these enactments, the amount for which plaintiffs and their children qualified under law are substantially reduced, as is demonstrated in the tabulation set forth subsequently herein. These reduced "maximum monthly grants" became effective July 1, 1969, and the New York State Department of Social Services and its agents have implemented this entire scheme of assistance to Dependent Children since that date.

9. By adopting § 131-a, the Legislature lowered the standards and significantly reduced the grants available to recipients in the following way, among others:

(a) Cost of living increments which had been added to the "regular recurring" grants are wiped out for numer-

ous families, and the families reduced below standards existing in July 1967.

(b) The "special flat quarterly grant" for New York City residents is abolished.

(c) Recipients living in certain places outside the City of New York, such as plaintiffs who reside in Nassau County and who, prior to July 1, 1969, received "regular and recurring" grants equal to those living in New York City because of equally high or higher living costs, are even further reduced in the standards and grants.

(d) The "special-needs" grants for recipients living outside New York City are abolished.

10. (a) United States Department of Health, Education and Welfare regulation requires that state plans must:

> "Provide that the standard (of assistance) will be uniformly applied throughout the State." 45 C.F.R. § 233.20(a)(2)(iii), 311 Fed. Reg. 1394 (Jan. 29, 1969) and
>
> "Provide that payment will be based on the determination of the amount of assistance needed and that, if full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly statewide." 45 C.F.R. § 233.20(a)(2)(viii), 311 Fed. Reg. 1394 (JaJn. 29, 1969).

(b) The standards of assistance and maximum grants adopted by the Legislature in § 131-a do not apply uniformly nor are the discriminations in amounts granted based on any rational consideration of living cost. For example, the living costs of plaintiffs, their children and their class who are residents of Nassau County and other

counties outside New York City, are as high or higher than those experienced by residents of New York City and public assistance grants to them were equal. They are no longer so under the new statutory scheme.

11. The reduction in the standard of need will render ineligible for aid needy, dependent families with children whose income and other resources were just below welfare standards and will now equal or exceed the reduced standard.

12. Unless this Court declares the reduction invalid and enjoins the implementation thereof, the aforementioned unlawful result will irreparably and severely harm the plaintiffs, cause extreme hardship on young, growing and disadvantaged children, and handicap the said children so as to seriously prejudice their chances for an adequate, self-sufficient life with equal opportunities.

V

Plaintiffs

1. (a) Plaintiffs are all citizens of the United States and reside in the County of Nassau, State of New York. Plaintiffs bring this action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on their own behalf and on behalf of all individuals and families similarly aggrieved by the implementation of § 131-a of the New York Social Services Law in violation of the Social Security Act and Federal Regulations.

Plaintiffs are members of a class of recipients of public assistance under the Aid to Dependent Children program residing in Nassau County and other urban and suburban counties other than those within the City of New York, whose grants have been reduced below those of persons

and children with identical need in the City of New York in violation of the Social Security Act and regulations promulgated thereunder, and the Fourteenth Amendment to the Constitution of the United States.

(b) Plai. Is bring this action as a class action because the questions of fact and law are common to the plaintiffs and the class they represent, the members of the class are so numerous as to make joinder of parties impracticable, the claims of the plaintiffs are typical of the claims of all members of the class, the plaintiffs fairly and adequately represent the claims of all the members of the class, the defendant is acting on grounds generally applicable to the entire class, the questions of law and fact common to the class predominate over any quetions affecting individual members, and class action will best provide for a fair and efficient adjudication of this controversy.

2. (a) Plaintiff Catherine Jones is a recipient of public assistance under the Aid to Dependent Children category on behalf of herself and her three infant children, Roberta Jones, age 16, Melvin Jones, age 14, and Elmer Jones, age 12, plaintiff's husband having abandoned the family 2 years ago, and prior to July 1, 1969, received as a monthly grant from the Nassau County Department of Social Services, exclusive of rent and fuel, as follows:

Basic Needs ..... (Plaintiff Jones has a diabetic condition complicated by high blood pressure and until December 1968 received a special diet allowance of $5.00)	$207.00
Phone	4.45
School Lunches	18.30
	$229.75

Intervenor's Complaint.

(b) Plaintiff Dolores Harvanek is a recipient of public assistance in the Aid to Dependent Children category on behalf of herself and her six children, Edward Jones, age 17, Georgie Jones, age 14, Andrew Jones, age 13, Laura Jones, age 12, John Jones, age 9, and Victoria Jones, age 8 plaintiff's husband having been separated from the family in 1962 by court decree based on cruel and inhuman treatment.

* * * (so in original)

age 8, and received prior to July 1, 1969, a monthly grant from the Nassau County Department of Social Services, exclusive of rent and fuel, as follows:

Basic Needs	$335.00
Phone	4.45
School lunch	36.60
	$376.05 *

3. Under the challenged law these plaintiffs receive assistance at the lower rates provided for recipients residing outside New York City, as set forth:

Plaintiff	*Prior Monthly Grant* *	*New York City Grant*	*Nassau Grant*
Jones	$229.75*	$208.00	$191.00
Harvanek	376.05	340.00	307.00

* Figures do not reflect the amount of periodic special grants for clothing and furniture available under the prior law, which in New York City was simplified to a $100 per year per person flat grant, and which, if applied by analogy to each client's case would average out to an added grant per month of $33.33 for Jones and $58.33 for Harvanek, prior to July 1, 1969.

VI

Defendants

4. The defendant State Department of Social Services, under New York Social Services Law § 20, has primary responsibility for promulgating regulations and instituting procedures for the administration and distribution of public assistance in New York State, in accordance with the requirements of the federal Social Security Act, the Social Services Law of New York, and the Constitutions of New York and the United States.

2. Defendant George K. Wyman, as Commissioner of the Department of Social Services of the State of New York, has primary responsibility for the administration of that Department in compliance with the law. New York Social Services Law § 34.

VII

As a first cause of action

1. Section 131-a violates the Social Security Act of 1935 and the regulations made pursuant thereto because it is not a plan of *uniform statewide application* in that public assistance recipients in Nassau and Westchester Counties and other non-New York City areas are singled out for special, unfavorable and discriminatory treatment.

2. Section 402(a)(1) of the Social Security Act, 42 U.S.C. § 602(a)(1) requires that a state plan "shall be in effect in all political sub-divisions of the state, and, if administered by them, be mandatory upon them." As interpreted by the Department of Health, Education and Welfare in its "Handbook of Public Assistance Administration" (the binding federal regulations of the United States Department of Health, Education and Welfare) the statute requires that the plan "shall . . . provide for administration in accordance with standards that are mandatory and equitable throughout the State." Pt. II § 4200(1) (1964)

3. On January 29, 1969, the Department of Health, Education and Welfare promulgated 45 C.F.R. § 233.20, 34 Fed. Reg. 1394, which provides in pertinent part:

"Section 233.20 Need and Amount of Assistance:

a) *Requirement for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

Intervenor's Complaint.

1. *General.* Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis . . .

2. *Standards of Assistance.* (i) Specify a statewide standard, expressed in money amounts, to be used in determining (a) the need of applicants and recipients and (b) the amount of the assistance payment.

. . . .

iii Provide that the standard will be uniformly applied throughout the State."

4. Although the legislative findings and purpose of the March 29, 1969 Act state that the reductions "will promote greater uniformity and equality of treatment," plaintiffs, as residents of Nassau County, will receive substantially less public assistance under § 131-a than persons identically situated but living within New York City.

5. The cost of living in Nassau County and other surrounding suburban counties is as high as in New York City. The United States Department of Labor, in its statistical analysis of the cost of living, makes no distinction between costs in New York City and neighboring counties. The same supermarket chains and department stores service both areas and charge substantially the same prices for all items, including basic necessities in both New York City and Nassau County. Certain other costs, such as transportation costs are higher in Nassau County.

6. Defendant Wyman previously recognized this absence of cost of living differential in promulgating § 352.4 of Title 18 of the New York Code, Rules and Regulations which established identical standards of need for public

assistance recipients living in New York City, Nassau and other suburban counties.

7. On information and belief, there was neither experience, information nor evidence brought before either house of the New York State Legislature, any committee thereof, or before the defendants justifying or warranting a legislative or administrative finding that there was an actual cost of living differential between New York City and Nassau County.

8. Section 131-a is in direct violation of the federal requirement that standards will be uniformly applied throughout the state, in that it sets different and lower standards for residents of Nassau County and elsewhere without regard to their equal need, and therefore, should be declared invalid and defendants should be enjoined from continuing implementation of the reduction of benefits pursuant thereto.

VIII

As and for a second cause of action

1. Bulletin 134 and the schedules contained therein are in direct violation of the Federal requirement that standards will be uniformly applied throughout the state in that it sets different and lower standards for residents of Nassau County and elsewhere as compared to those for New York City without regard to their equal need, and therefore, should be declared invalid, and defendants should be enjoined from continuing implementation of a reduction of benefits pursuant thereto.

IX

As and for a third cause of action

1. Section 131-a establishes a procedure whereby residents of Nassau County and other areas outside the City of New York must make an affirmative showing of equal need to obtain benefits equivalent to those granted those similarly situated but residents of the City of New York. The statutory scheme prevents plaintiffs from obtaining a greater quantum of assistance even if a showing of greater need is made.

2. The legislative scheme shows a preference for residents of New York City and thus violates both the federal requirements that standards will be applied uniformly throughout the state as provided in 42 U.S.C. § 602 et seq.

X

As and for a fourth cause of action

1. There is no legitimate or rational purpose served by discriminating against public assistance recipients in the Aid to Dependent Children program living outside of New York City, and more particularly in Nassau County and immediate suburban counties.

2. Section 131-a denies plaintiffs and all members of their class the equal protection of the laws in violation of the Fourteenth Amendment, and therefore, should be declared invalid.

XI

Plaintiffs have no adequate remedy at law. Defendant will continue to cause, and threaten to cause, irreparable injury unless enjoined forthwith.

WHEREFORE, plaintiffs respectfully pray on behalf of themselves and all others similarly situated that a three judge District Court be convened for the following purposes:

1. Enter preliminary and permanent injunctions enjoining the defendant, his successors in office, agents and employees, and all other persons in active concert and participation with them, from enforcing or taking any steps in any way toward continuing implementation, as to the class, the system of "maximum monthly grants" and schedules of need prescribed by New York Social Services Law § 131-a, added by Laws Ch. 184, March 31, 1969, as amended by Laws Ch. 411, May 9, 1969, on the ground that said grants and schedules are in violation of and inconsonant with the requirements of the Federal Social Security Act and regulations promulgated thereunder.

2. Enter a declaratory judgment holding that New York Social Services Law § 131-a and the Rules, Regulations, Bulletins and Standards promulgated thereunder denies plaintiffs residing in the Greater New York Area, but outside the City of New York, rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Federal Social Security Act and regulations promulgated thereunder, insofar as the said § 131-a provides greater benefits for persons in New York City than to persons outside the City of New York, but in the Greater New York Area, despite the similarity in needs and cost of living for the two groups of

recipients, and otherwise invidiously discriminates against plaintiffs and their class.

3. Allow plaintiffs their costs herein and grant them and all other persons similarly situated such additional or alternative relief as the Court may deem to be just and appropriate.

Respectfully submitted,

/s/ CARL RACHLIN,
General Counsel for the
National Welfare Rights Organization,
Attorney for Plaintiffs,
By James Spitzer, Of Counsel.

/s/ LEONARD S. CLARK,
Attorney for Plaintiffs,
By Burr C. Hollister, Of Counsel,
Office & P. O. Address,
Nassau County Law Services Committee, Inc.

EDWARD SPARER,
Attorney for Plaintiffs,
University of Pennsylvania.

Affidavit of Philip Weinberg, in Support of Defendants' Application to Vacate the Order to Show Cause or to Deny the Motion to Intervene.

STATE OF NEW YORK)
COUNTY OF NEW YORK)

PHILIP WEINBERG, being duly sworn, deposes and says:

I am an attorney in the office of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for defendants herein. I make this affidavit in support of defendants' application to vacate the order to show cause signed by the Hon. Constance Baker Motley on October 6, 1969, which ordered defendants to show cause why the application under Rule 24 of the Federal Rules of Civil Procedure made by Catherine Jones and Dolores Harvenek to intervene in the within proceeding should not be granted. In the alternative defendants oppose the application for intervention as untimely made and as an improper belated attempt to enlarge the scope of the instant action.

I

APPLICATION TO VACATE ORDER TO SHOW CAUSE

The instant order to show cause was issued without the slightest showing of the necessity therefor required by the Rules of this Court (Rule 9[4], General Rules, Southern District and Eastern District of New York). It should be vacated on that ground alone. The sense of urgency suggested by plaintiffs is spurious. There is no allegation that these plaintiffs have been prevented from making such an application previously or even that the application necessarily was prepared hastily. Thus the order to show cause was a tactical maneuver in which this Court should not participate.

The history of this case has been one in which plaintiffs have, as if it were a right, invariably proceeded by order to show cause and where time has been of the essence only when the time was necessary for defendants to prepare a defense of the State's statute.

The initial application for temporary restraining order was made by order to show cause signed by Judge Lasker on June 25, 1969. The following day, June 26, defendants were served with a 14 page complaint with 25 pages of exhibits, a 45 page memorandum in support of an application for a temporary injunction and a 2 volume appendix thereto. The motion was returnable on Tuesday, July 1.

On the return date defendants requested an adjournment from the Presiding Judge, the Hon. Constance Baker Motley. This was denied. Judge Motley heard oral argument on the temporary injunction. Defendants asked leave to file papers in opposition thereto and in opposition to the application for a three-judge court. This application was denied from the bench, and thereafter Judge Motley ordered a three-judge court without permitting defendants to file any papers in opposition.

On July 10, deponent was informed by telephone that the three-judge court would convene on July 17. Deponent's request for a short adjournment was denied later that day. Despite the brevity of time for defendants to prepare this complicated case, plaintiffs' application to take the deposition of defendant Commissioner Wyman was granted by Judge Motley on July 14, and scheduled for 2 o'clock on the same day. It was held the next day (July 15) at a considerable inconvenience to the State officials and counsel.

On July 17 plaintiffs' application for a temporary injunction and defendants' application for summary judgment were argued before this Court, and the decision was rendered on August 4. Plaintiffs prepared two proposed orders for settlement on August 12, one of which was re-

ceived by this office on August 11. Despite that fact, defendants' objections to the proposed orders were promptly filed. The order granting the preliminary injunction, entered September 12, was not served until September 19.

On October 5 Judge Motley signed the instant order to show cause, returnable today.

The consistent pattern in this complex case involving a serious challenge to a major State-wide statute and the possible expenditure of large amounts of State moneys has been one of artificial urgency on the part of plaintiffs. Defendants' opportunity to adequately prepare their defense of the statute has been repeatedly sacrificed, when there has not been a similar sacrifice of time by plaintiffs.

Plaintiffs offer no reason whatever to proceed by order to show cause in this instance, as required by Rule 9(c4). The order to show cause should be vacated as improvidently entered.

II

Opposition to Intervention

At all events the motion to intervene must be denied for three compelling reasons. It is not timely made as required by Rule 24. Furthermore, these intervenors are members of a class represented in *Rosado* v. *Wyman*, raising the same issue sought to be litigated here on behalf of AFDC recipients, in which an application for certiorari is pending in the Supreme Court. And most damaging of all, these intervenors are not members of the class that brought this litigation. They receive AFDC, while the present plaintiffs receive Aid for the Aged, Blind and Disabled ("AABD"), and in fact have an actual conflict of interest with plaintiffs' class because they allege that the Aged, Blind and Disabled recently had their prior disability grant ($8 per individual) restored by a demonstration

project which intervenors claim to be discriminatory as against AFDC recipients. (Aff. of Burr. C. Hollister, § 9[e]).

A. *Untimeliness*

Rule 24 requires that an application for intervention be "timely" made. The instant application is definitely out of time. An important substantive decision was made by this Court on August 4, 1969 in granting the preliminary injunction and that injunction will be appealed to the United States Supreme Court. Furthermore, the original date for trial (October 6, 1969) has already passed. It is far too late to bring new parties into the action and to expand its nature.

Timeliness is to be judged from the moment at which intervention was first appropriate. *Walpert* v. *Bart*, 44 F.R.D. 359 (D. Md. 1968). These intervenors could have intervened the day the action began. Their position is in no way different from what it was at the inception of the action. It was plaintiffs who framed this case as one brought by AABD recipients. They may not now transform the nature of the action to cover a different class of plaintiffs. Permissive intervention is allowed only at an early stage of the proceeding. See *United States* v. *Wilhelm Reich Foundation*, 17 F.R.D. 96, 102 (D. C. Me. 1954), aff'd 221 F. 2d 957, cert. den. 350 U. S. 842.

B. *These intervenors are adequately represented in Rosado* v. *Wyman*

This precise claim, that § 131-a denies equal protection to recipients of AFDC in Nassau County, was presented to the three-judge court in the Eastern District of New York in *Rosado* v. *Wyman*, in which an application for certiorari is presently pending in the Supreme Court. Allegations

made by co-counsel Lee A. Albert and others in that case were to the effect that AFDC recipients in New York State (and in Nassau County particularly) were represented in that class action. The order sought in that case would protect the instant intervenors.

Ironically, plaintiffs here went to great lengths to distinguish this action from that of the AFDC recipients in *Rosado*, but now try to avail themselves of a favorable order. Simultaneous litigation of the same issues before two Federal courts is not favored, and the motion to intervene should be denied on that basis alone. *United States* v. *Loew's Inc.*, 20 F.R.D. 423 (S.D.N.Y. 1957).

C. *Intervenors present issues of law and fact different from those presented by the original plaintiffs*

Even if those plaintiffs claim that subsequent actions by the Commissioner have made their situation different from that originally presented in *Rosado* and this Court were to find that that issue was different from that presented to the Supreme Court, AFDC recipients must bring a new action in the District Court. If AABD recipients could bring a new action despite the pendency of *Rosado*, then AFDC recipients must bring a new action notwithstanding the decision in *Rothstein*.

In its decision granting a preliminary injunction this Court relied upon the fact that plaintiffs were AABD rather than AFDC recipients (Opinion pp. 20-22).* Furthermore, an order was sought by plaintiffs which would extend to AFDC recipients and this Court rejected that extension and limited its order solely to the AABD class.

---

* We question whether the aged, blind and disabled are able, in view of their physical handicaps, to make any appreciable use of many of the facilities described by the defendant. . . ." (Op. p. 22)

This motion is a disingenuous means of overturning that limitation.

This is so particularly because the intervenors make an additional claim that they are not treated equally with AABD recipients because of a demonstration project instituted by defendant Commissioner on September 25, 1969, after the decision in this case. Thus, there is a conflict of interest between the original plaintiffs and the intervenors, or, at the very least, a different issue of fact and law itself enough to warrant the denial of intervention. *Schockett* v. *Bromley*, 192 F. 2d 257 (10th Cir. 1952) *dism'g app. from Bromley* v. *Sobel*, 101 F. Supp. 116 (D. Colo. 1951); *Mullins* v. *DeSoto Securities Co.*, 2 F.R.D. 502 (W. D. La. 1942), *app. dism.* 136 F. 2d 55; *H. K. Ferguson Co.* v. *Nickel Processing Corp. of New York*, 33 F.R.D. 268 (S.D.N.Y. 1963); *Reynolds Pen Co.* v. *Marshal Field & Co.*, 8 F.R.D. 314 (N. D. Ill. 1948); *Keystone Freight Lines* v. *Pratt Thomas Truck Line*, 17 F. Supp. 635 (W. D. Okl. 1941).

In *Ferguson, supra*, the Government was denied the right to intervene when a motion for interlocutory summary judgment was pending because it sought to raise new defenses. Similarly in *Keystone supra*, the Teamsters Union sought to intervene after a temporary injunction had been granted against union employers by a non-union firm. The Court held that the intervention presented new issues and intervention was refused.

Finally, this Court rejected the legislative finding that the social cost of living in New York City was greater than that in the rest of the State, partly on the ground that such factors, whether valid in the case of AFDC recipients, did not apply to AABD recipients (Opinion p. 22). Considerations of the cost of living differential between Nassau County and New York City AFDC recipients are different from those of AABD recipients, as this Court held.

Order Granting Leave to Intervene and Extending Preliminary Injunction.

This case should not be further complicated at this late stage by the intervention of AFDC recipients in a suit by AABD recipients. Denial of this application to intervene is obviously not a decision on the merits and will not interfere with the intervenors' right to bring an independent action, e.g., *Kennedy* v. *Bethlehem Steel Co.*, 102 F. 2d 141 (3rd Cir. 1939).

WHEREFORE, the within order to show cause should be vacated or, in the alternative, the application to intervene should be denied.

(Sworn to by Philip Weinberg, October 10, 1969.)

Order Granting Leave to Intervene and Extending Preliminary Injunction.

Plaintiff-applicants Catherine Jones and Dolores Harvanek, having moved this Court for leave to intervene into the instant action as party plaintiffs on behalf of themselves and on behalf of all other recipients of public assistance in the Aid to Dependent Children category, who are similarly situated, and said plaintiff-applicants having also moved for a Preliminary Injunction staying the enforcement of § 131-a of the New York Social Services Law and regulations promulgated thereunder in a manner which discriminates against recipients in the Aid to Dependent Children category in certain counties outside the City of New York, and these motions having been considered with due deliberation by this Court:

Upon the pleadings, affidavits, brief and oral depositions submitted initially on behalf of the original parties, the hearings held to date between the original parties, and the pleadings, affidavits and briefs submitted on behalf of the plaintiff-applicants herein, and the affidavit submitted in opposition by the defendants; this Court having found

Order Granting Leave to Intervene and Extending Preliminary Injunction.

in an opinion dated August 4, 1969 that the differential established by § 131-a and regulations promulgated thereunder between public assistance grants to recipients of Aid to the Aged, Blind or Disabled categories residing in New York City and those to residents of the counties of Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester constitutes an arbitrary, invidious inequality in violation of the Equal Protection Clause, it appearing to the Court that the said Catherine Jones and Dolores Harvanek should be permitted to intervene as representatives of recipients of Aid to Dependent Children, it is

ORDERED, ADJUDGED AND DECREED that

1. The plaintiff-applicants Catherine Jones and Dolores Harvanek have leave to intervene herein on behalf of themselves and on behalf of all recipients in the Aid to Dependent Children category who are similarly situated, may file instanter their complaint in this cause in the same manner and with like effect as if named as an original party, and are hereby made a party to this cause;

2. The caption of the instant action shall be amended to include the names of the plaintiff-applicants to read:

EDNA ROTHSTEIN, SYLVIA MILLER, HENRIETTA BATSON, CATHERINE JONES and DOLORES HARVANEK, individually and on behalf of all other persons similarly situated,

Plaintiffs,

against

GEORGE K. WYMAN, individually and in his capacity as Commissioner of Social Services for the State of New York, and the DEPARTMENT OF SOCIAL SERVICES for the State of New York,

Defendants.

Order Granting Leave to Intervene and Extending Preliminary Injunction.

3. Pending further order of this Court or termination of this action, defendants, their agents and employees are restrained from the enforcement or implementation of § 131-a of the New York Social Services Law with respect to recipients of Aid to Dependent Children, or from promulgating schedules of grants and allowances of public assistance or making payments thereof to such recipients, other than according to objective, non-discriminatory standards based upon the cost of the needs of such recipients.

Dated: New York, New York, October 20, 1969.

s/ PAUL H. HAYS,
U.S.C.J.

s/ WALTER R. MANSFIELD,
U.S.D.J.

s/ CONSTANCE BAKER MOTLEY,
U.S.D.J.

Letter Containing Opinion of Mr. Justice Harlan Denying Appellants' Application for a Stay Pending Appeal.

Office of the Clerk
Supreme Court of the United States
Washington, D. C. 20543

December 10, 1969

Samuel A. Hirshowitz, Esq.
First Assistant Attorney General
of New York
80 Centre Street
New York, N. Y. 10013

Re: Wyman Et Al. v. Rothstein Et Al.
No. 896, October Term, 1969

Dear Mr. Hirshowitz:

I quote below the order entered today by Mr. Justice Harlan on the application for a stay of the orders of the United States District Court for the Southern District of New York in the above-entitled case:

> "Having duly considered the papers submitted on both sides, I am of the opinion that I would not be justified in granting an interim stay of the orders of the three-judge District Court. Accordingly I deny this application for a stay, without prejudice to the State, if it is so advised, making an application to this Court for an accelerated hearing of its appeal."

Very truly yours,

John F. Davis, Clerk

By E. P. Cullinan
E. P. Cullinan
Chief Deputy

EPC:jmh

cc: Burr C. Hollister, Esq.
150 Old Country Road
Mineola, New York 11501

Affidavit of Joseph S. Barbaro, Attached to Plaintiffs' Memorandum of Law, in Support of a Motion for a Temporary Restraining Order.

STATE OF NEW YORK }
COUNTY OF NASSAU } ss.:

JOSEPH S. BARBARO, being duly sworn, deposes and says:

That he is the Commissioner of the Nassau County Department of Social Services.

That he holds a degree of Master of Science in Social Service from Fordham University and has been the Nassau County Commissioner for more than four years.

That as County Commissioner your deponent has had close contact with the administration of public assistance programs in Nassau County and generally throughout the State of New York. I am familiar with the needs of recipients of public assistance and with the standards of assistance, past and present, as established by the New York State Department of Social Services and local agencies, including Nassau County and the City of New York. Your deponent is also familiar with the provisions of the recent amendments to Section 131a of the Social Services Law of the State of New York and the Regulations, Bulletins and schedules promulgated thereunder which mandate generally reduced standards of public assistance and a lower scedule of maximum monthly grants for recipients residing in Nassau County as opposed to New York City.

That the present standards of assistance provide for life on a level of sustenance, nothing more, and often less. The standards which will go into effect on July 1, 1969 provide for even less. The fundamental goal of the new legislation would appear to be that of providing the least amount of funds to the smallest possible group. Thus, for example, the statute lowers grants, and reduces medicaid payments and eligibility; it requires clients to visit state employment offices every two weeks but fails to pro-

vide for the increased transportation costs which this necessitates.

It cannot be said that this law will take nothing from the poor. The enactment of the flat grant has eliminated the inequitable special grant but has failed to make provision for many special needs such as the special diet allowance for a tuberculosis patient, a low sodium diet for a person with heart disease and the elimination of the telephone allowance for all recipients without regard to the effect on their health and safety. These and numerous other allowances have been removed but not accounted for in the new flat grant.

That the differential in the standard of assistance which is higher for New York City than for the rest of the State, inclusive of Nassau County, is obviously not based on the cost of living or on any other meaningful standard. Based upon professional and personal experience, your deponent verily believes that the cost of maintaining minimally adequate standards of living in Nassau County is at least as high as it is in New York City, and certain costs, such as transporation, are even higher in Nassau County. The New York State Board of Social Welfare has for many years treated New York City and Nassau County the same in its schedule of grants SA-1.

Attached hereto are various proofs prepared with the cooperation of the County Attorney of Nassau County and the Planning Commission of Nassau County which were previously submitted to this Court in a related case which clearly document the lack of foundation for the finding that the cost of living in Nassau County is lower than that in New York City.

That the differential in standards of assistance as contained in Section 131a appears to me to be based on something other than a consideration of need.

(Sworn to by Joseph S. Barbaro, June 19, 1969.)

Affidavit of John Calbreath Burdis, Attached to Plaintiffs' Memorandum of Law, in Support of Motion for Temporary Restraining Order.

STATE OF NEW YORK }
COUNTY OF NASSAU } ss.:

JOHN CALBREATH BURDIS, being duly sworn, deposes and says:

(1) I am Planning Director of the Nassau County Planning Commission which released a report (Nassau County Bus System—An Analysis of Present Service, Technical Report No. 1) in July 1968, analyzing the Nassau County bus transportation system, sponsored in part through a grant from the United States Department of Housing and Urban Development.

(2) The character of the Nassau County transportation system imposes transportation costs on Nassau residents that far exceed those of New York City.

(3) While New York City has a substantially continuous network of public transportation lines (buses and subways) under the centralized supervision of the Transit Authority, generally allowing free transfers between lines at most interfaces, Nassau County, on the other hand, has only a bus system composed of seventeen separately franchised companies. (See Exhibit 1—Existing Bus Routes) with no provision for free transfers between bus lines.

(4) While the New York City Transit Authority imposes a fixed twenty cent fare on travel, even along a singular route, Nassau County transit fares vary and are almost always in excess of the city fare.

(5) The number and variety of the bus companies in Nassau County uually require commuters to make numerous expensive and time-consuming transfers in order to travel relatively short distances. Such conditions impose

greater costs of time and money on Nassau residents who attempt to use public transportation facilities than are borne by comparable New York City residents. For example (as described more fully in Exhibit 2), an analysis of the minimum cost and time to travel from various poverty areas throughout Nassau County to the Meadowbrook Hospital (which is the primary County medical facility), assuming all connections are made, reveals the following:

Origin	*Number of Buses*	*Cost*	*Time*
Great Neck	5	$1.70	1 hr. 32 minutes
Pt. Washington	3	1.31	1 hr. 9 minutes
Glen Cove	2	.75	1 hr. 25 minutes
New Cassel	2	.65	37 minutes
Inwood	3	1.11	1 hr. 23 minutes
Long Beach	2	.85	1 hr. 35 minutes
Freeport	2	.60	40 minutes

Similar difficulties present themselves to welfare recipients attempting to travel to various other points throughout Nassau County for other necessary purposes. (See Exhibit 3).

(6) On Sundays, bus service is seriously curtailed throughout the County and for residents of such poverty communities as Inwood, Glen Cove, Great Neck, Port Washington and New Cassel, service is virtually nonexistent. (See Exhibit 4—Sunday Service).

(7) Moreover, many residents of poverty communities are so removed from regular bus routes that they can be said to have no reasonable access to bus service at all. (See Exhibits 3 and 5). Consequently, they must depend regularly on use of other modes of transportation, including taxicabs, with an even greater cost for travel.

(Sworn to by John Calbreath Burdis, April 29, 1969.)

Letter From James Callison to George K. Wyman, Dated November 10, 1969 Submitted by Plaintiffs to This Court by Letter Dated January 7, 1970

DEPARTMENT OF HEALTH
EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
New York, N. Y., November 10, 1969.

Re Submittal No. S-33-69.

Mr. GEORGE K. WYMAN,
Commissioner, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203.

DEAR MR. WYMAN: The schedules of monthly grants and allowances set forth in the above raise a question as to whether there is provision in the New York State plan for use of a statewide standard in determining need and payments with any variation in amounts for localities based on local differences in the cost of the items in the standard (P.R. 20-7).

In this regard, we do not question that section 131-a(4) of the Social Services law would authorize a method of operation which is consistent with state-wideness requirements. However, there must be assurance that in implementing such provision, you will undertake to maintain the proper relationship to local costs and to exercise your power to promulgate revised schedules in any case in which you determine such revision is called for, i.e., that such action is not dependent on a request or application therefor by local authorities.

The regulations which you have promulgated establish four schedules of monthly grants and allowances as opposed to the former three schedules. The additional schedule results from splitting districts which were previously

Letter From James Callison to George K. Wyman, Dated November 10, 1969 Submitted by Plaintiffs to This Court by Letter Dated January 7, 1970.

included in one class; New York City is now treated separately from the Counties of Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester. Grants in the latter counties will now be approximately $4.50 lower per person than in New York City. The fact that all these counties were previously classed together with New York City would itself constitute some evidence that you have previously found the cost of the items contained in the standard to be virtually the same in all these areas, and would therefore indicate the need for specific supporting data as to the basis for this particular differentiation.

In addition, analysis of the schedules as against the pre-added monthly allowances previously payable to families in which the oldest child was ten or eleven shows a much higher increase for New York City than for any other district. In this connection, it is noted that while the previous difference between SA-1 and SA-3 schedules for the highest and lowest cost districts amounted usually to between $6 and $8 in comparable family units, the difference now ranges from $15 in a 2-person family to $39 in a family of seven. Also, while the previous schedules provided a uniform figure of $32 for additional persons, the new schedules provide $43 in New York City and $37 in every other district.

In your letter of June 2, 1969, you indicate that the differentiation between New York City and the rest of the State is based upon "its size and complexity, resulting in special requirements for transportation to use available services." It is difficult to understand how transportation costs could account for the differentiation in grant levels. Moreover, such differentiation does not appear to be supported by the most recent information (Autumn 1968) from the Bureau of Labor Statistics on living costs within

Letter From James Callison to George K. Wyman, Dated November 10, 1969 Submitted by Plaintiffs to This Court by Letter Dated January 7, 1970.

the State, e.g., such costs in Buffalo as compared to New York City.

In summary, the State standard must represent items of need to be made available to all recipients statewide. Differences in money amounts, if they exist, must result from demonstrable differences in the cost of these items in various sections of the State. Given the materials submitted to date, we are unable to find that there is in effect a statewide standard being uniformly applied throughout the State. We will, of course, give full consideration to any other information or comments which you may wish to submit.

We would appreciate as prompt a response as possible, whether in the form of a written reply or by way of a meeting with your staff.

Sincerely yours,

JAMES CALLISON,
Regional Commissioner.

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

NASSAU COUNTY DEPARTMENT OF SOCIAL SERVICES

HOME ECONOMICS AND MANAGEMENT

FAMILY AND CHILDREN SERVICES

PRICE GUIDE—CLOTHING AND HOUSEHOLD FURNISHINGS

Effective October 1st, 1968.

2% New York State Tax to be added unless purchases are paid directly by the Department to Vendor.

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR ITEMS REQUIRED BY INFANT AT BIRTH—Layette

Article	*Maximum Quantity*	*Unit Price*
OUTWEAR		
Dress and slip or suit	1	$4.00
Sweater set—including cap and booties	1	3.00
Jump suit	4	1.30
UNDERWEAR		
Diapers	3 doz.	2.75
Pants—water repellent	1	.60
Shirts—cotton—short sleeves or	3	.80
Shirts—cotton—sleeveless	3	.55
Slip—cotton	1	1.00
FOOTWEAR		
Socks—cotton	3	.35
MISCELLANEOUS		
Pad—waterproof—crib size	1	1.80
Pads—cotton quilted—18" square	4	.80
Receiving blankets—flannelette	4	.70
Crib blanket	1	3.00
Towel and wash cloth set	1	2.00
INCIDENTAL ITEMS		
Baby oil	10 oz.	.80
Cotton	4 oz.	.60
Diaper pins	Card—4 pins	.25
Soap—white—unscented	1 large bar	.20
Bottle brush, nylon	1	.50
Funnel	1	.45
Measuring pitcher	1	.55
Measuring spoons	1 set	.30
Nursing bottles (complete, includes nipples and nipple caps)		
8 oz. heat-resistant glass	8	.40
4 oz. heat-resistant glass	4	.40
Diaper pail and cover	1	3.00

Effective 10/1/68 2% Sales Tax to be Added

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

GUIDE FOR ESTIMATING NEEDS OF INFANT

	Article and Description	*Maximum Quantity*	*Unit Price*
Other Supplies which May be Required	Bath towels, terry cloth	4	$ 1.00
	Bathtub, oval shape, plastic	1	3.00
	Bunting	1	4.00
	Carriage Pad	1	4.00
	Mattress Pad—filled, quilted cotton	1	2.00
	Sheets—fitted	4	1.50
	Sheeting—water-repellent 36" x 54"	2	1.80
	Toilet seat	1	3.00
	Washcloths, cotton-knit	4	.25
	Sterilizer	1	3.50
Furniture	Carriage	1	25.00
	High Chair	1	14.00
	Crib and Mattress	1	35.00
	Mattress, to fit crib 54" x 30"	1	12.00
	Pad for Play Pen	1	4.00
	Play Pen, approx. 40" x 40"	1	19.00
	Stroller single	1	17.00
	" twin size	1	35.00
	" Two-seater	1	21.00
	Gate	1	4.00

Effective 10/1/68 2% sales tax to be added

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR CLOTHING ITEMS

Children—Birth through Five Years

Items	*Price*
Cotton jersey	$ 1.70
Cotton suit	4.00
Cotton dress	3.00
Slip	1.30
Overalls—summer or dungarees	2.00
Overalls—winter or dungarees	3.00
Sweater	4.00
Cap	2.00
Light jacket	3.00
Mittens	1.00
Snow suit	13.00
Raincoat	4.00
Play shorts	1.50
Swim suit	3.00
Bathrobe	4.00
Bedroom slippers	2.00
Pajamas—summer	2.00
Pajamas—winter	2.00
Under pants	.55
Under shirt	.65
Socks	.40
Galoshes	4.00
Rubbers	2.30
Shoes	7.00
Sneakers	3.00
Stretch pants	3.00
Skirt	3.00
Blouse	2.00
Spring coat	11.00

2% sales tax to be added

10/1/68—Home Economics and Management

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR CLOTHING ITEMS

GIRLS

Item	*6 thru 11*	*12 thru 15*	*16 thru 18*
Blouse	$ 2.00	$ 3.00	$ 3.00
Cotton Dress	4.00	6.00	7.00
Cotton jersey—short sleeves	2.00	2.50	3.00
Dressy dress	7.00	9.00	10.00
Dungarees	3.50	4.00	4.00
Hat	3.00	3.00	3.00
Play shorts	2.00	3.00	3.00
Raincoat	5.00	5.00	5.00
Skirt or stretch pants	4.00	5.00	5.00
Spring Coat	15.00	20.00	20.00
Sweater	4.00	4.00	5.00
Swimsuit	4.00	9.00	9.00
Winter coat	20.00	25.00	30.00
Ski Pants	5.00	—	—
Bathrobe	4.00	5.00	5.00
Bra	—	1.60	1.60
Girdle	—	3.00	3.00
Pajamas—summer	2.00	3.00	3.00
Pajamas—winter	2.00	3.00	3.00
Slip	2.00	2.00	2.50
Socks	.40	.40	.40
Stockings	——	.70	.70
Under pants	.55	.60	.60
Under shirt	.70	—	—
Bedroom slippers	2.00	2.00	2.00
Galoshes	4.00	4.00	4.00
Rubbers	3.00	3.00	3.00
Shoes	6.00	7.00	8.00
Sneakers	3.00	3.00	3.00
Gloves	1.50	1.50	1.50
Jacket, light	4.00	4.00	5.00
Sweat Shirt	1.75	2.00	—

Eff. 10/1/68—Home Economics and Management

2% New York State Tax to be Added

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR CLOTHING ITEMS

Boys

Item	Price *6 thru 11*	*12 thru 15*	*16 thru 18*
Cotton jerseys	$ 2.00	$ 3.00	$ 3.00
Dungarees	3.50	4.00	4.00
Hat or cap	2.00	2.00	2.00
Light jacket	4.50	5.00	7.00
Play shorts	2.00	3.00	3.00
Raincoat	4.00	5.00	5.00
Shirt	3.00	3.00	3.00
Slacks — summer	4.00	5.00	5.00
Slacks — winter	5.00	6.00	6.00
Suit	20.00	25.00	30.00
Sweater	5.00	6.00	6.00
Swim suit	2.50	3.00	3.00
Winter coat	15.00	20.00	25.00
Bathrobe	4.00	5.00	5.00
Pajamas — summer	2.60	3.00	3.00
Pajamas — winter	3.00	3.00	3.00
Socks	.50	.50	.60
Under pants	.65	.70	.80
Under shirts	.65	.70	.80
Bedroom slippers	3.00	3.00	3.00
Galoshes	5.00	5.00	5.50
Rubbers	3.00	3.00	4.00
Shoes	7.00	9.00	10.00
Sneakers	4.00	4.00	4.00
Gloves	1.50	1.50	1.50
Ski pants	7.00	—	—
Sweat shirt	1.75	2.00	2.00

Eff. 10/1/68 Home Economics and Management

2% Sales Tax to be added

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR CLOTHING ITEMS—(Continued)

Women

Article	Unit Prices	
	Regular Size	*Outside 46-60*
Outerwear		
Blouse, cotton jersey	$ 3.00	$ 7.00
Coat — spring	25.00	35.00
Coat — winter	35.00	45.00
Dress — cotton	5.00	5.00
Dress — dressy	9.00	15.00
Hat	4.00	4.00
Raincoat	6.00	10.00
Skirt	6.00	8.00
Suit	30.00	38.00
Sweater	5.00	8.00
Play shorts	3.50	5.00
Swim suit	11.00	16.00
Slacks — summer	4.00	
winter	5.00	
Underwear		
Bathrobe	6.00	8.00
Brassiere	3.00	5.00
Girdle	5.00	11.00
Nightgown — summer	3.00	3.00
Nightgown — winter	3.00	3.00
Panties	.75	1.40
Slip	3.00	5.00
Footwear		
Galoshes	4.00	4.00
Rubbers	3.00	3.00
Shoes	9.00	14.00
Slippers	3.00	3.00
Stockings	.80	1.25

2% Sales Tax to be added

Effective 10/1/68

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR CLOTHING ITEMS — (Continued)

MEN

ARTICLE	UNIT PRICES	
	Regular Size	*Outsize 48-60*
OUTERWEAR		
Coat — winter (suburban type)	$25.00	$25.00
Hat or cap	4.00	4.00
Jacket — light	8.00	12.00
Raincoat	18.00	25.00
Shirt and cotton jersey	3.00	7.00
Suit	48.00	62.00
Sweater	7.00	12.00
Trousers — summer	5.00	7.00
Trousers — winter	7.50	12.00
Play shorts	4.00	11.00
Swim suits	3.00	7.00
UNDERWEAR		
Bathrobe	5.00	9.00
Pajamas — summer	3.50	5.00
Pajamas — winter	4.00	6.00
Shirt	.90	1.40
Shorts	.90	1.65
FOOTWEAR		
Galoshes	5.50	8.00
Rubbers	4.00	5.00
Shoes	10.00	10.00
Slippers	3.00	4.00
Socks	.60	.60

2% Sales Tax to be added

Effective 10/1/68

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law):

PRICE GUIDE FOR HOUSEHOLD FURNITURE, FURNISHINGS AND EQUIPMENT

HOUSEHOLD FURNISHINGS AND EQUIPMENT

Items	*Unit Price*
Cleaning and Laundry Equipment	
Broom	$ 1.75
Clothes line (100 ft.)	1.75
Clothespins, per dozen	.25
Drying rack	4.00
Dust mop	1.85
Dust pan	.50
Electric iron	11.00
Ironing Board	7.00
Ironing Board pad and Cover	2.00
Laundry bag	2.00
Mop head	.85
Mop stick	.70
Pulley and hooks, pr.	.80
Scrub brush	.40
Toilet brush	.50
Utility pail	1.00
Whisk broom	.85
Clothes hamper	3.00
Cooking Equipment	
Baking Dish	1.30
Bread board	1.00
Butter dish with cover	.40
Cannister set	4.00
Cakepan	1.00
Can Opener	.35
Cookie sheet	1.00
Dishpan, plastic	1.00
Double boiler with cover, 2 qt.	3.60
Egg beater, rotary type	1.30

Items	*Unit Price*
Tableware	
place setting per person (knife, fork, tablespoon, teaspoon)	1.50
Fork	.30
Knife	.60
Tablespoon or soup spoon	.30
Teaspoon	.30
Cutlery per family	4.00
Dishes	
Place setting per person (Dinner plate, soup plate sauce dish, cup and saucer)	2.00
Cup and Saucer	.60
Dinner plate	.50
Sauce dish	.40
Soup or cereal bowl	.50
Water pitcher	1.20
Platter	1.15
Serving bowl	1.05
Glassware	
Sugar bowl and creamer	.75
Water tumbler	.15
General Furnishings	
Clock, alarm	3.00
Curtain rods	.40
Electric bulbs	.30
Electric fan	16.00
Shades, window (6 ft.) (45" wide)	2.65 4.00

Effective 10/1/68 2% Sales Tax to be Added

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

HOUSEHOLD FURNISHINGS AND EQUIPMENT

Items	*Unit Price*
Electric grill, 1-burner	4.00
2-burner heat controlled	14.00
Frying pan, 10″	2.50
Garbage can and cover 10 qt.	3.00
Kitchen fork	.50
Kitchen knife	1.30
Kitchen spoon	.50
Marketing cart	5.00
Measuring cup	.40
Measuring spoons, plastic	.30
Mixing bowls, set of 3 ovenproof glass	$ 2.95
Muffin pan, 12-cup	1.00
Paring knife	.45
Pie plate	.50
Potato masher	.55
Refrigerator dish, plastic	.45
Roasting pan	2.00
Saucepan with cover, 2 Qt.	2.00
Saucepan with cover, 5-6 Qt.	4.50
Spatula or turner	.50
Strainer, large size	.80
Teapot or coffee pot	2.00
Toaster electric	11.00
Toilet tissue holder	.75
Toilet seat	5.00
Window screens	3.00
Radio	16.00
Watch	10.00
MISCELLANEOUS	
Bed pan	6.00
Sewing machine	40.00
Scissors	2.50
Electric Heater	27.00
Heating pad	6.00
Suitcase	10.00
Lawn mower	20.00
Vacuum cleaner	$ 25.00
Washing machine, non-automatic, new	140.00

Effective 10/1/68 2% Sales Tax to be Added

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR HOUSEHOLD FURNISHING AND EQUIPMENT

PRICE GUIDE FOR HOUSEHOLD, FURNISHINGS AND EQUIPMENT

Kitchen	*Unit Price*
Table	$ 10.00
Large dinette table	19.50
Dinette set (table and 4 chairs)	39.00
Chair—straight	5.50
Cabinet, storage	15.00
Refrigerator	100.00
Range, electric	130.00
Range, gas	130.00
Cushion replacements for dinette set	3.00
Living Room	
Chair (upholstered seat 4 open arms)	25.00
Chair, straight	10.00
Lamp	5.00
Sofa	75.00
Hi Riser	85.00
Studio Couch	49.00

Bedroom	*Unit Price*
Bed, single (complete & set up)	$ 53.50
Bed, double (complete & set up)	53.50
Bunk beds (complete & set up) (All mattresses have 5 year guarantee)	108.00
Folding bed	30.00
Bed—headboard	8.00
Steel bed frame	10.00
Springs	26.00
Mattress	26.00
Legs for springs	6.00
Rug, washable	4.00
Chest of drawers	29.00
Wardrobe	20.00
Mirror	10.00
Lamp	3.00
Miscellaneous (cont'd)	
Bath mat	3.00
Laundry basket	3.00
Laundry tub	4.00
Dish rack	2.00
Mail box	5.00
Guard rails—bed	5.50
Tapes—venetian blinds	1.25
Slip cover—chair	6.00
Slip cover—couch	12.00
Window guards	7.00

2% Sales tax to be added

Effective 10/1/68

Price Guide—Clothing & Household Furnishings, Nassau County Dept. of Social Services, Oct. 1, 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR HOUSEHOLD FURNITURE, FURNISHINGS AND EQUIPMENT

HOUSEHOLD LINENS

Item	Quantity When Needed	Price	
Bedspread	1 per bed	$ 6.00	
Blankets	2 per bed—1 heavy	7.00	
	—1 light	5.00	
Curtains	1 pair per window	4.00	
Curtain, shower	1	3.00	
Dishcloth	2 per family	.30	
Pillow	1 per person	3.00	
Pillowcases	2 per pillow	.70	
Sheets, double	3 per bed	2.75	
single	3 per bed	2.30	
Sheeting, rubber	2 yards for bed	2.00	Per Yard
Tablecloth	2	3.50	
Towels, bath	2 per person	1.00	
hand	2 per person	.70	
kitchen	1 per person	.35	
Washcloth	2 per person	.40	
Drapes	in place of shades for wide windows	6.00	
Special Bedding			
Bedboard, double (Medical Need)	1	11.50	
Bedboard, single (Medical Need)	1	7.00	
Mattress cover for allergic person	1 per mattress	4.50	
Pillow, foam rubber for allergy	1 per person	4.00	
Pillowcase for allergic person	1 per pillow	.75	

Eff. 10/1/68 2% Sales Tax to be Added

Handbook for Case Units, New York City Dept. of Social Services, Jan., 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR CLOTHING ITEMS

MAN

The number of items listed under maximum quantity provides an adequate basic supply to be granted at any one time and to which additional quantities can be added with the use of the recurring grant.

Maximum Quantity	ARTICLE	UNIT PRICES *Regular Size*	*Outsize 48-60*
	OUTERWEAR		
1	Coat-winter (suburban type)	$25.00	$25.00
1	Hat	7.00	7.00
1	Jacket — light	8.95	17.90
*1	Raincoat	18.00	26.95
3	Shirt	3.00	6.95
1	Suit	47.45	62.45
1	Sweater	9.00	12.00
1	Trousers — summer	5.70	6.95
1	Trousers — winter	7.50	11.95
	UNDERWEAR		
1	Bathrobe	6.00	9.00
2	Pajamas — summer	3.45	4.95
2	Pajamas — winter	4.00	5.95
3	Shirt	.90	1.40
3	Shorts	.90	1.65
	FOOTWEAR		
1	Galoshes	5.50	7.95
1	Rubbers	4.15	4.95
1	Shoes	10.00	10.00
1	Slippers	3.00	4.00
3	Socks	.60	.60

* Only if employed

5% Sales and Use Tax to be Added

Handbook for Case Units, New York City Dept. of Social Services, Jan., 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR CLOTHING ITEMS — (Continued)

WOMAN

The number of items listed under maximum quantity provides an adequate basic supply to be granted at any one time and to which additional quantities can be added with the use of the recurring grant.

Maximum Quantity	ARTICLE	UNIT PRICES *Regular Size*	*Outside 48-60***
	OUTERWEAR		
*1	Blouse	$ 3.85	$ 7.00
1	Coat — spring	25.95	35.00
1	Coat — winter	40.00	45.00
2	Dress — cotton	4.00	4.00
1	Dress — dressy	10.00	15.00
1	Hat	4.00	4.00
*1	Raincoat	3.00	5.00
*1	Skirt	6.00	8.00
*1	Suit	30.00	38.00
1	Sweater	5.40	8.00
	UNDERWEAR		
1	Bathrobe	6.00	6.00
2	Brassiere	4.00	6.00
1	Girdle	8.00	11.00
2	Nightgown — summer	3.00	3.00
2	Nightgown — winter	3.00	3.00
3	Panties	.65	1.40
2	Slip	3.00	5.00
	FOOTWEAR		
1	Galoshes	4.00	4.00
1	Rubbers	4.00	4.00
1	Shoes	9.00	9.00
1	Slippers	3.50	3.50
2	Stockings	.75	1.25

* Only if employed

** For Tall sizes, see Home Economist.

5% Sales and Use Tax to be Added

Handbook for Case Units, New York City Dept. of Social Services, Jan., 1968 (Appended to Plaintiffs' Memorandum of Law).

~~PRICE GUIDE~~ FOR HOUSEHOLD FURNITURE, FURNISHINGS AND EQUIPMENT

LIST I. FURNITURE
(Reconditioned, unless otherwise indicated)

Article	*Unit Price*
LIVING ROOM	
Couch	
*Spring on legs with new cotton linters mattress	$30.00
**Hi Riser with new cotton linters mattress	50.00
Chair—occasional (upholstered seat and open arms)	15.00
Table—drop leaf or extension (wood)	15.00
Table—end	10.00
Lamp—table type (with shade)	4.00
Lamp—floor type (with shade)	6.00
Lampshade	2.00
KITCHEN	
Table—extension type (porcelain)	12.00
Dinette set (table and 4 chairs)	27.00
Chair—straight	5.00
***Cabinet—storage (new, metal)	12.00
***Refrigerator—electric (8-10 cu. ft.)	75.00
***Gas Range—4-burner, oven (30" wide)	45.00
Linoleum (new)—per sq. yd.	1.00
Cost of laying—per sq. yd. ($5.00 minimum)	.25
Linoleum rug (new) 6 x 9 ft.	8.00
9 x 12 ft.	12.00
9 x 15 ft.	15.00
12 x 12 ft.	16.00
12 x 15 ft.	18.00
Linoleum runner (new)—per yd. (36" wide)	1.00

Article	*Unit Price*
BEDROOM	
Bed—single (complete with spring and new cotton linters mattress)	$33.00
Bed—double (complete with spring and new cotton linters mattress)	35.00
Bunk bed (new, complete with spring and new cotton linters mattress)	60.00
Folding bed (new cotton linters mattress)	
single—30"	20.00
double—48"	29.00
Bedstead—single or double	12.00
Spring—coil	15.00
Spring on legs	15.00
Legs for springs (4)	6.00
Mattress (new, cotton linters, rolled edges)	
single	20.00
double	23.00
bunk bed size	15.00
Chest of drawers—3 drawers	15.00
4-5 drawers	20.00
Mirror	4.00
Wardrobe (new) metal or wood	20.00
Rug (new) washable	4.00

* Can be used for sitting or sleeping.
** Only if necessary for sleeping two in living room.
*** If not provided by landlord.

5% Sales and Use Tax to be Added

Revised April, 1966

Handbook for Case Units, New York City Dept. of Social Services, Jan., 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOR HOUSEHOLD FURNITURE, FURNISHINGS AND EQUIPMENT—(Continued)

LIST II. HOUSEHOLD FURNISHINGS AND EQUIPMENT

Items	*Unit Price*
CLEANING AND LAUNDRY EQUIPMENT	
Dust pan	$ .50
Broom	1.40
Dust mop	1.60
Utility pail	.95
Scrub brush	.30
Mop head	.80
Mop stick	.50
Electric iron automatic, dry	7.95
Ironing board	9.00
Ironing board pad and cover	1.45
Drying rack, metal	3.90
Washboard	.70
Clothes line (100 ft.)	1.50
Pulleys and hooks, pair	.55
Clothespins, per dozen	.15
Whisk broom	.80
Toilet Brush	.40
COOKING EQUIPMENT	
Double boiler with cover, 2 qt.	3.00
Saucepan with cover, 2 qt.	2.00
Saucepot with cover, 5-6 qt.	3.20
Frying pan, cast iron—10"	2.50
Roasting pan	2.00
Muffin pan, 12 cup	.80
Mixing bowls, set of 3, ovenproof glass	2.45
Measuring cup, metal	.40
Measuring spoons, plastic	.20
Butter dish with cover	.30
Teapot or coffee pot	1.90
Kitchen fork	.50
Kitchen knife	1.60
Kitchen spoon	.50
Paring knife	.45
Spatula or turner	.50
Potato masher	.55
Egg beater, rotary type	1.00
Can opener	.30
Strainer, large size	1.05
Fruit reamer, glass	.40
Refrigerator dish, plastic	.30
Dishpan, plastic	.75
Garbage can and cover, 10-qt.	2.00
Electric grill, 1-burner	3.50
Electric grill, 2-burner, heat controlled	11.45
Marketing cart	3.00
DISHES	
Place setting per person	$ 2.00
Includes items below:	
Dinner plate	.70
Soup or cereal bowl	.40
Sauce dish	.35
Cup and Saucer	.55
Serving dishes per family of 2 or more	
Includes items below:	
Serving bowl	1.00
Platter	1.00
GLASSWARE	
Water tumbler	.15
Sugar bowl and creamer	.70
CUTLERY—Stainless Steel	
Place setting per person	1.75
Includes items below:	
Knife	.65
Fork	.40
Table or soup spoon	.40
Teaspoon	.30
GENERAL FURNISHINGS	
Shades, window (6 ft.)	2.80
Window screens	1.50
Curtain rods	.50
Towel rack	.95
Toilet tissue holder	.55
Clock, alarm	3.00
Electric bulbs	.25
MISCELLANEOUS	
Sewing machine, reconditioned	40.00
Washing machine, non-automatic —new	120.00
Suitcase	6.50

5% Sales and Use Tax to be Added

Revised, April, 1966

Handbook for Case Units, New York City Dept. of Social Services, Jan., 1968 (Appended to Plaintiffs' Memorandum of Law).

PRICE GUIDE FOOR HOUSEHOLD FURNITURE, FURNISHINGS AND EQUIPMENT—(Continued)

List III. Household Linens

Item	*Quantity*	*Description*	*Unit Price*
Bedspread	1 per bed	Cotton chenille or woven, 86" x 105"	$5.50
Blankets	2 per bed	Acrilan or other fibers, 72" x 90"	8.00
Couch cover	1 per couch	Cotton woven, washable, 72" x 105"	8.00
Curtains	1 pair per window	Nylon or dacron, tailored, 40" x 81" per pair	3.20
Curtain, shower	1	Vinyl, 72" x 72"	3.00
Dishcloth	2	Cotton, 12" x 14"	.30
Pillow	1 per person	Feather	3.75
Pillowcases	2 per pillow	Muslin, 22" x 42"	.65
Sheets, double	3 per bed	Muslin, 81" x 108"	2.75
single	3 per bed	Muslin, 63" x 108"	2.00
Sheeting, rubber	2 yards for bed	36" wide ($1.70 per yard)	3.40
Tablecloth, cotton	1	54" x 72"	3.35
plastic	1	54" x 72"	3.50
Towels, bath	2 per person	Terry cloth, plain, 22" x 44"	1.00
hand	2 per person	Terry cloth, plain, 16" x 30"	.70
kitchen	1 per person	Cotton, 16" x 30"	.35
Washcloth	2 per person	Terry cloth, 12" x 12"	.40
Special Bedding			
Bedboard, double	1	Only when requested by clinic or physician	11.45
Bedboard, single	1	Only when requested by clinic or physician	7.45
Mattress cover for allergic person	1 per mattress	Only when requested by clinic or physician	3.00
Pillow, foam rubber	1 per person	Only when requested by clinic or physician	4.00
Pillowcase for allergic person	1 per pillow	Only when requested by clinic or physician	.50

5% Sales and Use Tax to be Added

Revised January, 1968

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

WESTCHESTER COUNTY DEPARTMENT OF PUBLIC WELFARE

DIVISION OF FAMILY AND CHILD WELFARE

PRICE GUIDE BULLETIN No. 9

1967

APPROVAL OF HOME ECONOMIST IS NECESSARY FOR ITEMS IN EXCESS OF THIS GUIDE.

CONSULT HOME ECONOMIST FOR HELP WITH OUT-SIZE CLOTHING AND OTHER PROBLEMS RELATED TO CONSUMER INFORMATION AND MONEY-MANAGEMENT.

CONTENTS

PAGE 1 — Infant Layette & During First Year

PAGE 2 — Pre-school Children—Under 2 years and 2-5 Years

PAGE 3 — Girls—6 thru 11 Years & 12 thru 15 Years

PAGE 4 — Misses 16-20 Years and Women

PAGE 5 — Boys—6 thru 11 Years & 12 thru 15 Years
PAGE 6 — Boys—16-20 Years & Men
PAGE 7-8-9-10 — Home Furnishings—Nursery—Kitchen

PAGE 11 — Electric Appliances—Cooking Stove and Laundry Equipment

PAGE 12 — Stoves & Heaters

PAGE 13-14 — Food Service Equipment & Supplies

PAGE 15 — Clearing Equipment & Supplies
PAGE 16-17 — Household Textile & Furnishings

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

PRE-SCHOOL CHILDREN

	Years Under 2	*Years 2-5*
OUTERWEAR	DRESS SIZES	
	1-3	3-6X
Snowsuit & Hat or Cap	9.70	11.00
Sweater, Orlon	2.98	2.98
Dress, Cotton (girls)	2.98	2.98
Shirt & Slacks Set (boys)	2.98	2.98
Overalls, Corduroy	1.99	1.99
Polo Shirt — Cotton Jersey	1.10	1.10
Light Jacket	2.98	3.98
Play Shorts	1.50	1.00
Swim Suit	1.99	2.98
UNDERWEAR & NIGHTWEAR		
Cotton Slip	1.25	1.98
Panties, Cotton Knit	.59 training	.59
T-Shirt, Cotton Knit	.59	.59
Pajamas, Flannelette	1.98	1.98
Pajamas, Summer weight	1.98	1.98
Bathrobe, washable	3.00	3.98
Socks	.35	.35
FOOTWEAR		
	(Size 2-8)	(Size 8½-12)
Shoes	4.99	5.59
Bedroom Slippers	1.99	1.99
Rubbers	1.99	1.99
Galoshes	3.98	4.00

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

	Girls	
	Years 6—11	Years 12—15
	Dress Size	
	Subteens 7—14	Teens 10—16
Outerwear		
Hat	1.98	2.50
Coat, wool, lined	17.00	20.00
Rain Coat	3.99 plastic	3.99 plastic
Spring Coat or All-Weather Coat	12.95	17.95
Ski Pants	5.38	5.95
Sweater, orlon, cardigan	3.99	3.99
Dress, washable—"dressy"	5.95	6.99
Jumper, washable	3.99	4.99
Blouse	1.98	2.97
Skirt, wool blend, washable	3.99	4.99
Gym Suit	3.50	3.50
Dungarees	2.30	3.99
Cotton Jersey	1.79	1.99
Play Shorts	1.98	2.98
Swim Suit	3.98	6.00
Underwear & Nightwear		
Bathrobe	3.99	4.99
Slip, cotton	1.99	1.99
Garter belt	1.00	1.00
Girdle—2-way stretch	—	3.98
Brassiere, bandeau type	—	1.39
Under shirt	.59	—
Panties, cotton knit	.59	.59
Pajamas, flannelette	1.99	2.85
Pajamas, summerweight	1.99	2.10
Socks	.39	.69
Stockings	—	.79
	Sizes—	
Footwear	(2½—4)	(4½—9)
Shoes	5.99	6.25
Sneakers—(low cut)	3.00	3.00
Bedroom slippers	1.99	1.99
Rubbers	1.99	2.67
Galoshes or Boots	3.99	4.12
Shoe repairs — heels	1.00	1.00
— stitching	.30	.30

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

	Misses & Women Years 16—20 Dress Size 10—20	Adults 32—42
Outerwear		
Hat	3.95	3.95
Coat, Winter wool	22.99	35.00
Coat, Spring	17.95	23.45
Rain Coat, Plastic	3.99	6.64
Sweater, orlon	5.99	5.99
Dress—cotton	5.98	6.98
Dress—"dressy"	8.95	12.98
Suit—Winterweight	19.95	25.00
Suit—Lightweight	6.98	6.97
Shirt	5.99	6.98
Blouse	2.98	3.98
Cotton Jersey	1.98	—
Slacks or Dungarees	3.99	—
Bathrobe	5.99	5.80
Play shorts	2.98	3.98
Swim Suit	8.00	—
Gym Suit	3.50	—
Underwear & Nightwear		
Slip	2.99	2.99
Girdle—pull-on	3.99	3.98
Corset—good support	8.98	12.00
Brassiere, bandeau	1.98	2.00
Brassiere, good support	3.00	3.99
Panties	.59	.69
Vest	.69	.69
Union Suit	1.79	1.79
Nightgown	2.98	3.98
Bathrobe	5.99	5.75
Anklets Socks	.69	—
Stockings	.79	.84
Footwear		
Shoes	7.99	7.99
Bedroom Slippers	1.99	1.99
Rubbers	2.54	2.68
Galoshes	4.00	4.00
Sneakers	3.00	3.00
Shoe Repairs—Half Soles & Heels	2.75	2.75
—Heels	.75	.75
—Stitching	.45	.45

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

	Boys	
	Years 6—11 Junior Sizes 8—10	Years 12—15 Cadets Sizes 12—20
Outerwear		
Cap	1.98	1.98
Hat	—	5.95
Jacket—heavy, winterweight	13.99	16.47
Jacket—light	3.98	5.98
Top Coat, cotton twill, water repellent	10.98	14.98
Rain Coat	3.48	3.99
Sweater	6.94	7.90
Suit—woolen, two piece	19.98	25.00
Sport Coat—wool or blend	—	16.00
Slacks, corduroy	4.98	3.99
wool or blend	4.98	6.97
summer weight	3.49	3.94
Dungarees	2.69	3.98
Ski pants	6.97	—
Shirt	1.99	3.20
Cotton Jersey	1.99	2.90
Play Shorts	1.98	2.99
Swim Suit	1.98	2.75
Gym Suit	4.74	4.74
Underwear & Nightwear		
Shorts	.69	.69
Shirts	.69	.69
Pajamas	2.98	2.98
Bathrobe	3.99	4.77
Socks	.39	.59
Footwear	(Sizes 2½-6)	(Sizes 6-12)
Shoes	8.80	9.90
Sneakers	3.99	4.77
Bedroom slippers	1.99	2.99
Rubbers	2.54	2.69
Galoshes—(Arctic)	4.79	4.97
Shoe repairs—Half soles & heels	3.50	3.50
—Heels	1.25	1.25
—Stitching	.45	.45

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

BOYS & MEN

	YEARS 16—20	ADULTS
	SUIT SIZES	
	STUDENTS	ADULTS 36–46
OUTERWEAR		
Cap	1.98	1.98
Hat	5.96	7.97
Jacket—(Suburban—wool)	16.50	20.00
Rain Coat—all-weather	19.50 zip-out lining	26.95 zip-out lining
Rain Coat—plastic	3.99	5.95
Sweater	7.90	7.99
Suit woolen, two-piece	39.95	45.00
Slacks, lightweight	4.25	5.15
Slacks, winterweight	6.97	8.88
Trousers, work	3.95	5.98
Dungarees	2.98	3.50
Overall Jacket	4.95	4.95
Light Jacket	6.98	8.98
Shirt	2.99	2.98
Cotton Jersey	2.90	—
Play Shorts	2.99	—
Swim Suit	2.99	—
Gym Suit	4.75	—
UNDERWEAR & NIGHTWEAR		
Union Suit	2.78	2.78
Under Shorts	.89	.89
Under Shirt	.89	.89
Pajamas—winterweight	3.98	3.98
summer weight	2.98	2.98
Socks	.59	.69
Bathrobe	5.87	5.99
FOOTWEAR		
Shoes	9.90	9.90
Sneakers	3.99	3.99
Bedroom Slippers	2.99	3.99
Rubbers	3.00	2.99
Galoshes—(Arctic)	4.99	5.95
Shoe Repairs—Half Soles & Heels	3.50	3.50
—Heels	1.25	1.25
—Stitching	.50	.50

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

Home Furnishings

1967

Living and Dining Rooms

Table Lamps—Complete	$ 10.00
Lounge—30 to 39"—Sleeps one	$ 50.00
30" Cot with Mattress and Springs	$ 40.00
39" Cot with Mattress and Springs	$ 40.00
Chair with padded back and seat	$ 15.00
Small chest of Drawers for Lamp	$ 17.00
Aluminum Table—Sturdy—Folding with Drop Leaves—seats up to twelve	$ 20.00
Kitchen Table 24 x 36" with 8 inch Drop Leaves	$ 20.00
Chairs for Dining	$ 10.00
Floor Lamp—complete	$ 15.00
Upholstered chair	$40.00

Bedding—All Mattresses minimum Thickness 4 inches

Steel Bed Frames 39" to 54" with Legs	$ 10.00
Steel Bed Frame 39" with Flat Band Bed Springs on Steel Legs	$ 25.00
Link—Box—or Coil Springs Twin or Double	$ 30.00
Cotton, Polyurethane or interspring Mattresses—Twin	$ 20.00
Cotton, Polyurethane or interspring—Double	$ 30.00
Bed Set—Mattress, Frame and Springs—Twin	$ 70.00
Bed Set—Mattress, Frame and Springs—Double	$100.00

Bunk, Trundle or Duplex Beds—All Mattresses minimum thickness four inches

Complete Double Bunk Bed Sets—39 inch with Ladder and Guard Rail	$100.00
Complete Bunk Bed Sets—39" with Ladder and Guard Rail	$125.00
Duplex Bed Sets 30" x 75" 2 steel link springs 2 coil Mattresses	$100.00

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

Trundle Bed Sets 39″ x 75″ Link Springs with Bed Stead, 2 Interspring—Mattresses	$125.00
Bunk Bed Mattress with Padded Wood Frame Base	$ 50.00
Link Type Bunk Bed Springs 39″ x 75″	$ 12.00
Bunk Bed Mattress 39″	$ 20.00
Sofabed (will sleep two).....	$130.00
Single lounge or sofa (will sleep one)	$115.00

Fold-A-Bed

39″ Tubular Bed—Single Interspring Mattress—Link Springs	$ 40.00

Nursery Equipment

Baby Beds—Standard 53 x 30½ x 41½ inches high Toe-Touch Release, Double Drop Sides —3 Position Steel Link Springs, Plastic Casters	$ 35.00
Mattress-Interspring or Polyurethane—minimum thickness 4 inches	$ 20.00
Bumper Vinyl Cover-Box Edge Top Pillow—Edge Bottom Elastic Ties and Metal Snaps	$ 7.00
Complete Baby Bed Set—Bed and Springs, Mattress and Bumper	$ 62.00
Play Pen—Nylon mesh sides, hardboard floor, rims covered supported by Vinyl, braced legs with plastic tips 42 x 27 x 29″ high	$ 20.00
Pad for Play Pen—Polyurethane ½ inch pad Vinyl Covering	$ 4.00
Training Chair—Seat	$ 5.00
Baby Seat	$ 3.00
High Chair	$ 20.00
Stroller—chrome plated frame 8 inch spoke wheels	$ 20.00
Two-Seater Stroller—Sleeper for Twins with 2 wheel brake	$ 40.00

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

Carriage connects to stroller—11 inch spoke wheels $ 40.00

CLOTHING STORAGE

Chest of Drawers—
4 Drawer—29 x 16 x 37" ..... $ 25.00
5 Drawer—29 x 16 x 43" ..... $ 30.00
6 Drawer Dresser— 45 x 16 x 39½" ..... $ 40.00
Wardrobe 24 Gauge Steel Cabinets
20 x 63 inch high—30 inches wide ..... $ 30.00
20 x 63 inch high—36 inches wide ..... $ 34.00
20 x 63 inch high—42 inches wide ..... $ 38.00

Wall Mirror ..... $ 10.00

ALARM CLOCK ..... $ 4.00

FLOOR COVERINGS

Vinyl print on reinforced felt backing then covered with a layer of clear non-porous Vinyl—(needs no pasting to floor—flexible back grips the floor).
Width— 4½ feet—(per running foot) ..... $ .79
Width— 7½ feet—(per running foot) ..... $ 1.14
Width— 9 feet—(per running foot) ..... $ 1.27
Width—10½ feet—(per running foot) ..... $ 1.59
Width—12 feet—(per running foot) ..... $ 1.72

Vinyl Froor Rug—
9 x 12 feet ..... $ 16.00
12 x 12 feet ..... $ 21.00
12 x 15 feet ..... $ 26.00

Window Shades

6 Gauge—washable vinyl Linen-like texture (6 foot length)
15" through 37½ inch width ..... $ 2.35
37⅜ inch through 43¼ inch width ..... $ 2.95
43⅜ inch through 49¼ inch width ..... $ 3.75
49⅜ inch through 54¼ inch width ..... $ 4.85

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

Curtain Rods

Heavy duty steel rods for tailored or priscilla curtain all hardware included in price—Extension type rod.

18 to 28 inches	$ .49
30 to 52 inches	$ .69
52 to 90 inches	$ 1.00
66 to 120 inches	$ 2.97

Screens

Ventilater Screens—Metal louver backed with 18 x 12″ mesh, galvanized steel screens, metal rails and wooden ends.

7″ high—22 to 37 inches wide	$ 1.15
10¼″ high—22 to 37 inches wide	$ 1.40
10¼″ high—26 to 45 inches wide	$ 1.70

Adjustable Screens—Galvanized—18 x 14 mesh wire, wooden ends, metal rails

Height 9½ inches—20 to 33 inches wide	$ .85
Height 17½ inches—20 to 33 inches wide	$ 1.35
Height 17½ inches—26 to 45 inches wide	$ 1.75

Kitchen

Utility Table—20″ x 4″ with 8 inch Drop Leaf, Strong Steel Legs, High Pressure Plastic Top, Chrome Plating ..... $ 20.00

Utility Cabinets

40 inch wide Base Steel Cabinet 36″ High 20″ Deep ..... $ 50.00

24 inch width Base Steel Cabinet 36″ High, Chrome-Plated Edging ..... $ 35.00
2 Drawers and 2 Cabinet Doors—Chrome Plated Handle Pulls—Brushed Aluminum Legs

40 inch width Wall Steel Cabinet 30″ high 12″ Deep ..... $ 30.00

24 inch width Wall Steel Cabinet 30″ high 12″ Deep 2 Doors—2 Shelves ..... $ 20.00

Kitchen Chairs

Step Stool—Tubular Steel Frame ..... $ 10.00

Utility Serving Cart Table—All Steel Construction on wheels ..... $ 10.00

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law):

Electric Equipment and Appliances—All J.L. Listed		
Electric Refrigerator—Refrigerator Space 6 to 12 cu. ft. with freezer space 1 to 3 cu. ft. manual defrost		$175.00
if used less than 10 years	$ 75.00	100.00
Electric Refrigerator compact size—2 cu. ft.		100.00
Electric Iron Steam/Dry		10.00
Electric—1 Burner—1000 watts		5.00
2 Burner—650 and 1000 watts		10.00
2 Burner—Sperotic heat control		25.00
Electric Toaster Automatic—1000 watts		9.00
Electric Vacuum Cleaner and attachments—1 horse-power cannister		50.00
Electric Vacuum Cleaner with 1½ horse-power and power-driven brush upright with attachments (allergy to dust)		100.00
Electric—non-automatic Wringer-type washer with pump and base connections—2 speeds		150.00
If used less than 10 years		75.00
Electric Clock		4.00
Gas Cooking—Approved seal of American Gas Association		
20 inch range with oven		110.00
if used not more than 10 years		50.00
30 inch range with oven		125.00
if used not more than 10 years		75.00
Laundry Equipment		
Washing Machine—See Electrical Equipment		
Iron—See Electrical Equipment		
All Steel Laundry Cabinets (single or double) with cover, gives work space, has double drain system, with covered connections		60.00
Aluminum Single Laundry Tubs—21 gals. on wheels with cover		15.00
Double Laundry Tubs (aluminum)— gals. on wheels with cover		25.00
Hand Wringer—Clamp-on		16.00

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

Indoor Drying Rack—fits into bath tubs—30 ft. drying space	5.00
55 ft. drying space—folds for storage	6.00
Outdoor Drying Rack—Disappearing clothes line on reels 150 ft. of drying space enough wash for a family of six, lines are plastic coated steel	20.00
Ground Standard Outdoor Drying Rack—242 ft. holds six washer loads	25.00
Ironing Board—Tubular steel legs and top, self-leveling foot adjuster for uneven floors, table height, adjustable with locks—23 to 36 inch, legs are off center for sit-down ironing	7.50
Ironing Board Cover Pads—Triple-layer, fits 54 inch table top ironing board, Silicone-treated cotton cover, ventilated center layer, bottom layer non-slip material	2.00

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

SPACE HEATERS

It is important to instruct recipients to make use of licensed plumber.

Gas Vented Heaters—A.G.A. Approved safety pilot and thermostat controlled, for natural, mixed or bottled gas, with built in blower.

One-Two Rooms—30,000 B.T.U. Heater	$ 85.00
Three-Four Rooms 55,000 B.T.U.	$125.00
Five-Six Rooms 70,000 B.T.U.	$145.00

Oil Vented Heaters

Steel Cabinets, with heat economizer, automatic draft control uses 6 inch vent pipe and has adjustable leg levels, with built-in blower and thermostat.

One-Two Rooms 49,000 B.T.U. Heater	$ 60.00
Three-Six Rooms 75,000 B.T.U.	$130.00
Outside Tank Installation Kit	$ 12.00
Stoveboard	$ 6.00
Inside Fuel Tank—5 gal.	$ 10.00
8 gal.	$ 15.00

Electric Portable Space Heaters

110-120 volt Heater 1000-1320-1650 wattage range, fan-forced air thermostat controlled, tipover safety switch, U.L. Approved	$ 40.00
1 Heat—Range 1320 wattage	$ 25.00

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

FOOD SERVICE EQUIPMENT AND SUPPLIES

1967

Cooking Utensils

Tea or Coffee Pot	$ 2.65
Double Boiler with cover (2 qt.)	4.20
Sauce Pan and cover (3 qt.)	2.60
Sauce Pan and cover (2 qt.)	2.20
Sauce Pot and cover (6 qt.)	3.60
Roasting and Baking Pan with cover (approx. size 16 x 11 x 2½")	4.50
Fry Pan with cover 10½ inches	3.75
Fry Pan with cover 6½ inches	2.00
Baking Dish oven-proof glass (2 qt.)	1.00
Loaf Pan 9 x 5 x 2½"	2.20
Cake Pan 13 x 9 x 2"	2.20
Cake Pan 9 x 9 x 1½"	2.80
Pie Pan 9" Pyrex	.50
Custard Cups (Set of 6)	.89
Muffin Tins 6 cups	.59
Muffin Tins 12 cups	.89
Cookie Sheet	2.00
Mixing Bowls (Set of 3)	2.00

Cutlery and Miscellaneous

Paring Knife	.59
Large Knife	1.95
Kitchen Fork	.65
Stirring Spoon—slotted	.35
Turner—slotted type	.45
Strainer 7"	.90
Measuring Cup—Pyrex 8 oz.	.35
Measuring Cup—metal	.50
Measuring Spoons (Set of 4)	.60
Rolling Pin	.79
Egg Beater—rotary type	1.10
Potato Masher	.59
Food Grater	.40
Food Grinder/Chopper	7.00
Fruit Reamer—glass	.50
Can Opener—screw type	.50
Knife Sharpener—2 wheel type	.75
Dish Pan	.59
Vegetable Brush	.40
Marketing Cart	5.00

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

FOOD SERVICE EQUIPMENT AND SUPPLIES

1967

Dishes

16 Piece Set— 4 person family	$ 5.25
32 Piece Set— 6 person family	7.85
53 Piece Set— 8 person family	13.00
64 Piece Set—12 person family	15.70

Individual Dishes

Dinner Plate	.25
Small Plate	.15
Soup or Cereal Bowl	.20
Cup and Saucer	.30
Sauce Dish	.15

Extra Dishes

Serving Meat Platter	1.00
Serving Vegetable Dishes	.50
Sugar and Creamer	1.10
Pitcher	1.00
Water Glasses (each) (10 oz.)	.25
Water Glasses (each) (4 oz.)	.20
Salter & Pepper (pair)	.85

Sets of Flatware—Stainless Steel

24 Pieces—Stainless Steel (for 6)	6.25
16 Pieces—Stainless Steel (for 4)	4.00
32 Pieces—Stainless Steel (for 8)	9.00

Individual Flatware—Stainless Steel

Fork	.25
Knife	.80
Teaspoon	.25
Dessert or Tablespoons	.50

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

HOUSEHOLD EQUIPMENT AND SUPPLIES

1967

Cleaning Equipment

Carpet Sweeper—Bristles securely anchored and keeps clean as it sweeps, moving steel combs—combs dirt into dust pans, 3 level sweeping action, rubber wheels and bumper	$ 10.50
Electric Vacuum Cleaner—See Electrical Equipment	
Dust Mop—with handle, mophead, washable 100% nylon or cotton	3.25
Cellulose Double Sponge Mop (To wring pull down handle grip on mop handle—wood handle)	3.00
Extra head	1.00
Broom—indoor—outdoor (Natural fibers are not harmed by water)	2.00
Wringer type cleaning pail—10 qt.	4.00
Dust Pan—short handle	.50
Scrubbing Brush	.39
Toilet Brush	.39

Garbage and Trash Can

Extra Large Plastic Trash Can retards odor and bacteria	
20 gal.	6.00
26 gal.	7.00
32 gal.	8.00
Swinging door Plastic Can	
50 qts.	3.00

Miscellaneous Furnishings

Towel Rack	.60
Waste Basket	.75
Clock—one day or electric	4.00
Scissors	1.00
Hammer	.35
Gimlet	.25
Screw Driver	.35
Pliers	.50
Hooks	.15 each
Electric Light Bulbs	.39

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

HOUSEHOLD TEXTILE PRICES

SHEETS

Double—Muslin—128—140 thread count—81 x 108	$ 2.10
Twin—Muslin—128—140 thread count—72 x 108	2.00
Single—Muslin—128—140 thread count—63 x 99	1.75
Crib, fitted—full size—52 x 27	1.00
Pillow Cases	
Muslin—36 x 42 inches	.59
Blankets	
Utility Blanket—90% wool and 10% nylon—80 x 90 inches	8.00
100% Acrylic Blanket—(mothproof, mildeproof, machine wash & dry)	
Double—80 x 90 inches	9.00
Twin—66 x 90 inches	7.00
Cot or Single—54 x 80 inches	5.00
Crib	4.00
Heavy Weight Napped Cotton Crib Blanket	3.00
Cotton Bed Spreads—Machine Washable	5.00
Couch and Chair Covers—Cotton and Nylon woven, stretchable—sofa	15.00
machine washable—chair	8.50
Studio Couch Cover	10.00
Bolster Cover	5.00
Mattress Covers—Elasticized Vinyl Covers—6 gauge	
Single	2.00
Double	4.00
Crib	2.00
Mattress Pads—Quilted Cotton Fitted	
Double—54 x 75 inches	5.00
Single—39 x 75 inches	4.00
Crib—30 x 54 x 42¼—full size	2.00
Pillows, Feather or Foam—20 x 26 inches	3.00

Price Guide Bulletin No. 9, Westchester County Dept. of Social Service (1967) (Appended to Plaintiffs' Memorandum of Law).

Bed Board—30 x 60 inches	each	$ 7.00
—30 x 60 inches—set of 2		12.00
Rubber Sheeting—36 x 54 inches		1.45
Towels and Other Linens		
Towels		
Bath—cotton terry, plain—22 x 44		.99
Hand—cotton terry, plain—15 x 27		.59
Wash Clothes—cotton terry, plain—12 x 12		.39
Dish Towels—16 x 30		.35
Dish Cloths—cotton, open mesh—13 x 16 inches		.25
Table Cloths—		
54 x 72		2.98
54 x 54		2.00
Curtains—Tailored, Nylon, or Dacron panel price per pair—40 x 81"	pair	5.20
Draperies—Unljned—Fiberglass—washable 48 x 84"	pair	6.98

Affidavit of Joseph S. Barbaro Attached to Plaintiffs' Memorandum of Law in Support of Motion for Leave to Intervene.

JOSEPH S. BARBARO, being duly sworn, deposes and says:

That Deponent is the Commissioner of the Nassau County Department of Social Services and submits this affidavit in reference to the effect of § 131-a of the Social Services Law, as amended and modified by 18 N.Y.C.R.R. § 352.4, upon Families with Dependent Children.

That Deponent holds a degree of Master of Science in Social Service from Fordham University and has been the Commissioner in Nassau County for more than four years.

That your Deponent has had close contact with the administration of public assistance programs in Nassau County and generally throughout the State of New York, as specifically set forth in my affidavit herein dated June 19, 1969. I have had close contact with all categories of needy persons, including needy families with dependent children.

Under § 131-a and the schedules promulgated thereunder, the monthly basic allowances for AABD and ADC families living in any particular area are computed according to identical schedules; these schedules provide significantly higher allowances for a family with chidren in New York City than for a family with the same number of persons in Nassau County and the differential persists at an average of $4.00 to $5.00 per person regardless of the size of the family.

That like the AABD recipients, the ADC families have suffered the loss of all special grants including special diets and telephone allowances. In some respects the impact of the legislation is even more severe on families with children who depended so heavily on the special clothing grants, particularly to adequately clothe their children for school, because their children outgrow and outwear clothes at a rapid rate. The elimination of school

lunch allowances created an additional pressure on ADC budgets without being accounted for in the new flat grant. These plus the differential between counties with identical costs of living have a very severe impact on children whose opportunity in life depends substantially on being adequately fed and clothed now.

It should also be noted that the AABD families have both (1) had restored statewide, a special allowance of $8.00 for single persons and $5.00 for persons living with families, effective October 1, 1969, and (2) had the inequality vis-a-vis New York City and suburban counties corrected. ADC families have been left unchanged.

That, as pointed out in my original affidavit, based on my personal and professional experience, the cost of living in Nassau County is identical or higher than that in New York City and this is certainly as true for residents in the ADC categories as it is for other residents: The proof submitted by me in this case as to the cost of living applies with equal force to *all* categories of recipients, including ADC. This is why in June, 1969, I, and the Board of Supervisors of Nassau County requested the State Commissioner to raise all categories, including ADC, to the level of New York City.

(Sworn to by Joseph S. Barbaro, October 9, 1969.)